

426175

ORIGINAL

ORIGINAL
(Red)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 UNITED STATES OF AMERICA :
4 and STATE OF MARYLAND, :
5 Plaintiffs :
6 vs. :
7 EDWARD AZRAEL, Individually :
8 and as Personal Representative :
9 for the Estate of AL LANDAY; : CIVIL ACTION
10 HARRIET AZRAEL, AT&T : No. 89-2898
11 TECHNOLOGIES, INC., GENERAL :
12 MOTORS CORPORATION, BALTIMORE :
13 GAS and ELECTRIC COMPANY, : Judge William N.
14 BROWNING-FERRIS, INC., and J. : Nickerson
15 WILLIAM PARKER and SONS, INC., :
16 Defendants :
17 * * * * * *

18 (Caption Continued)

19 DEPOSITION OF EDGAR S. SMITH

20

21 Reported by: Brenda R. Pearson

SALOMON REPORTING SERVICE, INC.
Baltimore, Maryland (410) 539-6760

1 BROWNING-FERRIS, INC., :
2 Third-Party Plaintiff :
3 vs. :
4 MAYOR AND CITY COUNCIL OF :
5 BALTIMORE, KEWANEE INDUSTRIES, :
6 INC., BEATRICE COMPANIES, :
7 INC., and ALLIED-SIGNAL, INC., :
8 Third-Party Defendants:
9 -----
10
11 Deposition of EDGAR S. SMITH, taken on
12 Monday, October 15, 1991, at 9:35 a.m., at the
13 offices of Piper & Marbury, 36 South Charles
14 Street, Baltimore, Maryland, before Brenda R.
15 Pearson, Notary Public.

16
17 -----
18
19
20
21

ORIGINAL
(100)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

APPEARANCES:

Patricia Kabloch Casano, Esquire,
On behalf of the U.S. Department
of Justice
Kathy M. Kinsey, Esquire,
On behalf of the State of
Maryland
Andrew S. Goldman, Esquire,
On behalf of the Environmental
Protection Agency
Kim I. Montroll, Esquire,
Daniel A. Masur, Esquire,
On behalf of the City of
Baltimore
Kathryn B. Thomson, Esquire,
On behalf of Defendant AT&T
Ronald D. Byrd, Esquire,
On behalf of Defendant BG&E
Brian R. Land, Esquire,
On behalf of Defendant
General Motors Corporation

SALOMON REPORTING SERVICE, INC.
Baltimore, Maryland (410) 539-6760

4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

APPEARANCES: (Continued)

Thomas A. Ryan, Esquire,
On behalf of Defendant
Browning-Ferris, Inc.

M. Lee Doane, Esquire,
On behalf of Defendant
Exxon

John A. Gillan, Esquire,
On behalf of Defendant
Beatrice Company

Samuel A. Bleicher, Esquire,
On behalf of Defendant
Allied-Signal, Inc.

Robert Brager, Esquire,
On behalf of Defendant
Sweetheart Cup

Thomas F. Karaba, Esquire,
On behalf of Defendant
O'Brien Corporation

1 APPEARANCES: (Continued)

2
3 R. David Joseph, Esquire,

4 On behalf of Defendant

5 H. M. Holdings and

6 Crown Cork & Seal

7 Thomas L. Crowe, Esquire,

8 On behalf of Defendant

9 PORI International, Inc.

10 Sheila Foran, Esquire,

11 On behalf of Defendant

12 Canton Company of Baltimore

13 Tom Ligan, Esquire,

14 On behalf of Defendant

15 Armco Steel, Inc.

16 Nancy J. Larson, Esquire,

17 On behalf of Defendant

18 Container Corporation

19 Charles R. Schaller, Esquire,

20 On behalf of Defendant

21 Edward Azrael

SALOMON REPORTING SERVICE, INC.
Baltimore, Maryland (410) 539-6760

STIPULATIONS

It is stipulated and agreed by and between counsel for the respective parties that the reading and signing of this deposition by the witness is hereby waived.

It is further stipulated and agreed that the filing of this deposition with the Clerk of Court is hereby waived.

EDGAR S. SMITH,
being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

MS. CASANO: Before we begin, does anyone have anything that needs to be discussed on the record this morning?

(No response).

EXAMINATION BY MS. CASANO:

Q. Mr. Smith, my name is Pat Casano. I'm with the Justice Department representing the Environmental Protection Agency in connection

1 with this matter. Would you state your name and
2 address, please?

3 A. Edgar S. Smith, 2072 Nelson Railroad,
4 Jarrettsville.

5 Q. That is in Maryland?

6 A. Maryland, yes.

7 Q. If at any time during the course of
8 the deposition, Mr. Smith, you would like to take
9 a break, let Tom know and he will let us know.
10 If you don't understand a question that you have
11 been asked, just say so, and whoever has asked
12 you the question will attempt to restate it.

13 And if you would please try to
14 remember that you need to answer orally as
15 opposed to just nodding your head.

16 Mr. Smith, are you currently taking
17 any medications?

18 A. Yes, I am.

19 Q. What are those medications?

20 A. They are for my heart, heart
21 medication.

1 MR. BYRD: Pat, can you ask him to
2 speak up?

3 MS. CASANO: If you could speak a
4 little more loudly.

5 Q. Do those medications have any effect
6 on your memory, Mr. Smith?

7 A. No.

8 Q. Do you think they will have any effect
9 at all on your ability to testify today?

10 A. No, I don't.

11 Q. Mr. Smith, I'm going to hand you a
12 document that has been marked E. Smith Exhibit 1
13 and I would ask you to review that, please.

14 A. (Perusing.) Yes, I do remember that.

15 Q. What is Exhibit 1, Mr. Smith?

16 A. It is just about when I was running
17 the heavy equipment for Robb Tyler.

18 Q. Is Exhibit 1 a copy of an affidavit
19 that you actually signed?

20 A. Yes, it is.

21 (Whereupon, Smith Deposition

1 Exhibit No. 1, affidavit, marked.)

2 Q. If you would turn to page five, do you
3 recall, Mr. Smith, before you signed the
4 affidavit, were you sworn to tell the truth, the
5 whole truth and nothing but the truth by a notary
6 public or other court reporter?

7 A. Yes.

8 Q. And at the time that you signed the
9 affidavit, was the information contained in the
10 affidavit based upon your personal knowledge?

11 A. Yes, ma'am.

12 Q. Was that knowledge that you obtained
13 while you were employed by Robb Tyler,
14 Incorporated?

15 A. Yes, it was.

16 Q. And was the information contained in
17 the affidavit the truth, the whole truth and
18 nothing but the truth?

19 A. Yes, it was.

20 Q. I'm going to hand you another document
21 that has been marked E. Smith Exhibit 2 and ask

1 if you would just review the cover sheet, please,
2 actually the cover sheet and the second page.

3 MR. RYAN: Pat, do you mean the page
4 that the appearance is on?

5 MS. CASANO: Right.

6 Q. And then if you would also turn to the
7 very last page of Exhibit 2, Mr. Smith, and
8 review that.

9 A. (Perusing.)

10 Q. And the very last page, Mr. Smith, if
11 you would look at that, it will be all the way at
12 the end of the document.

13 A. (Perusing.)

14 Q. Have you seen Exhibit 2 before, Mr.
15 Smith?

16 A. Yes.

17 (Whereupon, Smith Deposition
18 Exhibit No. 2, transcript, marked.)

19 Q. Exhibit 2 is a transcript of an
20 interview that was conducted or in which you
21 participated in May of this year; is that

1 correct?

2 MR. MASUR: Objection. There is
3 nothing on here that says transcript of interview
4 called a deposition.

5 MS. CASANO: I stand corrected.

6 Q. Is Exhibit 2 a transcript of a
7 deposition in which you participated in May of
8 this year, Mr. Smith?

9 A. Yes.

10 Q. If you would turn to the very last
11 page of Exhibit 2.

12 MR. RYAN: The correction sheet?

13 MS. CASANO: Yes.

14 Q. Down at the bottom of the page, Mr.
15 Smith, is that your signature?

16 A. Yes, it is.

17 Q. Do you recall that you read a copy of
18 this transcript and signed this errata sheet
19 after reading the transcript?

20 A. Yes.

21 Q. Do you recall that at the time of the

1 deposition, you were again sworn by a court
2 reporter to tell the truth, the whole truth and
3 nothing but the truth?

4 A. Yes, it was.

5 Q. And during the course of the
6 deposition, did you tell the truth?

7 A. As best I recall.

8 Q. Was the information that you provided
9 during the deposition based upon your personal
10 knowledge?

11 A. Yes, ma'am.

12 Q. And again, was that personal knowledge
13 that you obtained during the course of your
14 employment by Robb Tyler, Incorporated?

15 A. Yes, ma'am.

16 MR. RYAN: I would just state for the
17 record, some of the questions may have called for
18 his hearsay knowledge. To that extent,
19 certainly, it was not based on personal
20 knowledge.

21 Q. You are retired from Browning-Ferris,

1 Incorporated, Mr. Smith; is that correct?

2 A. Yes.

3 Q. Do you receive a pension from
4 Browning-Ferris?

5 A. Yes, ma'am.

6 Q. I would turn your attention, Mr.
7 Smith, to Exhibit 1, the affidavit. Paragraph
8 two of your affidavit indicates that you began
9 working for Robb Tyler in 1964; is that correct?

10 A. Yes, it is.

11 Q. And you continued to work there at
12 least until Robb Tyler was acquired by
13 Browning-Ferris, Incorporated?

14 A. Yes, I did.

15 Q. Turning your attention to paragraph 3
16 of the affidavit, that paragraph indicates that
17 you ran a bulldozer for Robb Tyler at the
18 Rosedale Landfill until that landfill closed in
19 the spring of 1969.

20 A. Yes.

21 Q. Is there anything today about that

1 paragraph that you would change?

2 A. No, ma'am.

3 Q. Are you sure, Mr. Smith, that the
4 Rosedale Landfill closed in the spring of 1969?

5 A. Yes, ma'am.

6 Q. Is there something in particular that
7 makes you certain of that date?

8 A. No.

9 Q. Do you recall, for example, that the
10 trees were in bloom or the flowers were in
11 bloom?

12 A. No, ma'am, I don't.

13 Q. Do you know why the Rosedale Landfill
14 was closed?

15 A. It was full. They couldn't dump any
16 more there.

17 Q. Did you ever do any type of work for
18 Robb Tyler before the Rosedale Landfill closed
19 other than operate a bulldozer at the landfill?

20 A. No.

21 Q. I take it that you never drove a truck

1 for Robb Tyler?

2 A. No, ma'am.

3 Q. Did you operate the bulldozer for Robb
4 Tyler at any landfill other than the Rosedale
5 Landfill before the Rosedale Landfill closed?

6 A. No, ma'am.

7 Q. Turning your attention to paragraph 4
8 of the affidavit, if you would review that
9 paragraph, please?

10 A. (Perusing).

11 Q. Is there anything about that
12 paragraph, Mr. Smith, that you recall differently
13 today?

14 A. No, ma'am.

15 Q. I turn your attention to Exhibit 2,
16 page 55, line 14. I'm going to read an excerpt
17 from the transcript, Mr. Smith. Beginning on
18 line 14, question: "Mr. Smith, I'm going to make
19 some references to your affidavit here. I'm now
20 looking at paragraph 4 of your affidavit and it
21 mentions your working at Norris Farms. Do you

1 see that?

2 "Answer: Yes."

3 A. Yes.

4 Q. You don't have to answer yet.

5 "Question: It says you worked at
6 Norris Farms before it opened, do you see that?

7 "Answer: Yes.

8 "Question: What did you do there?

9 "Answer: We were more or less
10 preparing the place for the dumping trash.

11 "Question: Were you doing that before
12 you went to Sauer's?

13 "Answer: No. Yes. Yes. Yeah, I
14 worked down there some before I went up to
15 Sauer's.

16 "Question: So the preparation work at
17 Norris Farms was something that you did before
18 you went to Sauer's?

19 "Answer: (Nodding head indicating
20 yes.) Before 68th Street closed down."

21 And that is the end of the quotation.

1 That excerpt from the transcript, Mr.
2 Smith, indicates that you did preparation work at
3 Norris Farm before the Rosedale Landfill closed;
4 is that correct?

5 A. Yes. It is.

6 Q. Did you do any preparation work at
7 Norris Farm after the Rosedale landfill closed
8 but before Norris Farm opened?

9 A. No, I didn't.

10 Q. Turning your attention to paragraph
11 five of Exhibit 1, if you would review that
12 paragraph, please.

13 A. (Perusing.)

14 Q. Is there anything about paragraph 5
15 that you recall differently today, Mr. Smith?

16 A. No, ma'am.

17 Q. In paragraph five that you indicate
18 after the Rosedale Landfill closed and before
19 Norris Farm opened, Robb Tyler needed a place to
20 dispose of waste from some of its customers on
21 the east side of Baltimore. How do you define

1 east side of Baltimore?

2 A. I don't really know how I define that
3 except that it was on this side of town, and it
4 was closer to Sauer's Landfill than it was to
5 Quarantine Road.

6 Q. Would you use anything in particular
7 to indicate the dividing line between this side
8 of town and the west side of town, a street, for
9 example? Would Charles Street divide the east
10 side from the west side?

11 A. I always used the tunnel.

12 Q. Which tunnel is that?

13 A. It is the Harbor Tunnel.

14 Q. Everything east of the Harbor Tunnel
15 was the east side of town?

16 A. To me it was.

17 Q. Paragraph five also indicates that
18 during what I'm going to refer to as the window
19 period, that time after Rosedale closed and
20 before Norris Farm opened, that during that
21 window period, Tyler needed a place to dispose of

1 waste from some of its customers on the east side
2 of Baltimore. By that, did you mean that Tyler
3 needed a place for all of its customers who were
4 located on the east side, or does it literally
5 mean only some of the customers who were located
6 on the east side?

7 Do you see the distinction I'm trying
8 to make?

9 A. Yes. I suppose some of it. I will
10 say that.

11 Q. Do you know of any other landfills
12 that were available for use for customers on the
13 east side of Baltimore during the window period?

14 A. No, ma'am.

15 Q. Turn your attention to Exhibit 2, page
16 57. If no one has any objection, there are
17 several places during the course of my
18 examination where I'm going to be asking the
19 witness to read relatively lengthy stretches of
20 the transcript, say anywhere from five to eight
21 pages, and rather than reading that into the

1 transcript, I will provide the beginning page and
2 line number and the concluding page and line
3 number and just ask him to read it and then ask
4 questions about it.

5 Does anybody have any objection to
6 that? I think it might save some time and the
7 court reporter's fingers.

8 Mr. Smith, I'd like you to read from
9 page 57, beginning on line 5 to page 62,
10 beginning on line 1.

11 A. (Perusing.)

12 MS. MORRIS: Pat, at this time I'd
13 like to raise an objection to the use of this
14 deposition to the extent that any reference to
15 pages would be an acceptance by all parties here
16 that the deposition does, in fact, accurately
17 reflect opinions of the witness.

18 I would like to point out that at the
19 time the deposition was taken, it was after the
20 third-party complaints were filed, and despite
21 that, the third parties were not present at the

1 deposition, and none of the statements were
2 challenged by the third parties.

3 To the extent that it is used to ask
4 Mr. Smith his opinion at the present time, then I
5 would not object to its use. But I would like to
6 make a distinction between incorporation by
7 reference of whole parts of this document as
8 testimony today.

9 MR. LAND: Pat, let me make a
10 statement for the record just to avoid any
11 confusion. Notwithstanding the fact that
12 Exhibit 2 is labeled as a deposition of Edgar
13 Smith, it was never intended to be a deposition.

14 It is a sworn, on-the-record interview
15 that was taken by General Motors and the other
16 original defendants, and that is what it is.

17 MR. MASUR: Let me say for the record
18 that this does, in fact, purport to be different
19 than the other sworn transcript, not only that it
20 does not identify itself as a sworn statement but
21 that there is no prefatory introductory language

1 as there is in the others. This one is signed by
2 the witness. There is an errata sheet and it
3 appears, for all purposes, unlike the others, to
4 be a deposition. I don't challenge what you
5 intended. I'm saying that the document on its
6 face has no indications that it was intended to
7 be so narrowed, unlike the other sworn statements
8 that were produced.

9 MR. RYAN: There is no need to get
10 into an argument on the record about it, but what
11 shows up on the face of the document is not
12 relevant. It is the agreement that the parties
13 had that were pursuant to the joint defense
14 agreement.

15 MS. CASANO: Let me just say that I
16 think I see the distinction that you are making,
17 Lee. On the theory that Mr. Smith's recollection
18 in May may have been better and probably was
19 better than it is now in October, even though
20 that is a relatively short period of time, what I
21 intend to do is to refer to the deposition, to

1 the transcript in a number of places and
2 essentially ask him whether he would make any
3 changes or if his recollection of what he said is
4 any different today, and then to ask some
5 follow-up questions from there, my thinking being
6 that anyone then is free to cross-examine him
7 today with respect to the statements that I'm
8 going to be asking about.

9 So I'm not sure what that means,
10 except I guess we have all stated how we think we
11 can use this and go from there.

12 MS. DOANE: Can I raise one more
13 then. I guess I would have an objection to that
14 to the extent that I think Mr. Smith's statements
15 today ought to stand on their own, and while it
16 is true that we can cross-examine him today, we
17 are cross-examining from things that he may not
18 necessarily testify as to today.

19 And so, to the extent that anything in
20 here, except for what he says today at this
21 moment is taken as the truth, I think I would

1 have an objection to that because of the way it
2 was taken.

3 MR. JOSEPH: Pat, one more point. Are
4 all the sections that you intend to use of this
5 lengthy? Are most of them two or three pages?

6 MS. CASANO: No, most of them are
7 shorter.

8 MR. JOSEPH: I think that it would be
9 better if they were read out loud myself. I
10 would prefer that they were read out loud. I
11 think it gives everybody a chance to hear it. I
12 think there is a difference between reading
13 something out loud and reading something to
14 yourself. Unless it is of this length, I would
15 prefer that it be read out loud.

16 MR. MASUR: Well, in the interest of
17 not paying for any more pages of transcript than
18 we have to, I would prefer to go the approach
19 that you suggested rather than having the court
20 reporter type out five to seven pages or even
21 shorter excerpts.

1 MR. RYAN: I agree with that.

2 MS. CASANO: Any other opinions?

3 MR. RYAN: He's read it.

4 Q. Mr. Smith, is there anything in the
5 testimony that appears in Exhibit 2 on pages 57
6 from line 5 to page 62, line 1, that you recall
7 differently today?

8 A. No, ma'am.

9 Q. There is nothing that you would change
10 in that testimony?

11 A. No.

12 Q. Now, that excerpt indicates that Robb
13 Tyler had a Quarantine Landfill available during
14 the window period; is that correct?

15 A. Yes ma'am.

16 Q. And where was the Quarantine Landfill
17 located?

18 A. On Quarantine Road on the other side
19 of town.

20 Q. You would regard that as the west side
21 of Baltimore?

1 A. The west side, yes, ma'am.

2 Q. Is it fair to say that during the
3 window period, Tyler's drivers took loads either
4 to Sauer's Landfill or the Quarantine Landfill,
5 depending on which was closest?

6 A. Yes, ma'am.

7 Q. Turning your attention to Exhibit 1,
8 paragraph six, if you would review that, please.

9 A. (Perusing.)

10 Q. Is there anything about paragraph 6
11 that you recall any differently today, Mr.
12 Smith?

13 A. No, ma'am.

14 Q. And there is nothing that you would
15 change in paragraph 6?

16 A. No, ma'am.

17 Q. Turning your attention to paragraph 7
18 of Exhibit 1, if you would review that paragraph,
19 please?

20 Q. Is there anything about paragraph 7
21 that you recall any differently today, Mr.

1 Smith?

2 A. No, ma'am.

3 Q. Is there anything in paragraph 7 that
4 you would change?

5 A. No.

6 Q. I'd like to direct your attention now
7 to Exhibit 2, and this is one of the lengthy
8 excerpts. I'd like you to read from page 71,
9 line 13, to page 82, line 10.

10 MS. CASANO: Have you finished reading
11 that excerpt, Mr. Smith?

12 A. Yes.

13 Q. Is there any aspect of the testimony
14 that is recorded on the pages that you just read
15 that you would change if you were asked the
16 questions that appear on those pages today?

17 A. There is one that I might would
18 change, and that is in there where it says, "Did
19 Robb Tyler trucks get tickets?" Well, I'm really
20 not sure. I don't know.

21 Q. But other than that, the testimony

1 would be the same?

2 A. The testimony is fine.

3 Q. In paragraph 7 of your affidavit which
4 is Exhibit 1, you state that Fred Sauer permitted
5 Robb Tyler, Inc. drivers to dispose of waste on a
6 specific portion of Sauer's dump. By a specific
7 portion of Sauer's dump, did you mean the trench
8 that you discuss in the portion of the transcript
9 that you just read?

10 A. Yes, ma'am.

11 Q. I'm a little bit confused about what
12 that trench looked like and whether it existed
13 when you first went to work at Sauer's Landfill.
14 Was the trench there when you first went to work
15 at Sauer's Landfill?

16 A. Yes, ma'am.

17 Q. When I think of a trench, I think of a
18 cut through the earth, if you will, that has two
19 roughly parallel sides. Is that the type of
20 trench that this was?

21 A. Yes, ma'am. That is the type of

1 trench it was.

2 Q. And could you tell whether that was a
3 man-made trench or whether that was a natural
4 trench?

5 A. It was a man-made trench.

6 Q. Do you know whether it had been made
7 by employees of Sauer's Landfill?

8 A. I presumed it was.

9 Q. When you went to Sauer's Landfill, Mr.
10 Smith, how did you enter the landfill?

11 A. I must have came in off of North Point
12 Road.

13 Q. Were there any other entrances to the
14 landfill?

15 A. Yes, ma'am, the one off of Kane
16 Street.

17 Q. When trucks came into the landfill to
18 dump loads, which entrances did they use?

19 A. Kane Street.

20 Q. Did trucks ever use North Point, the
21 entrance on North Point?

1 A. Not to my knowledge, they didn't.

2 Q. Were there any roads in the landfill?

3 MR. RYAN: Do you mean paved roads,
4 Pat, or do you mean just paths?

5 Q. Not necessarily paved roads, but was
6 there anything that had a sufficiently definite
7 shape that you would have regarded it as a road?

8 A. Yes, there was.

9 Q. How many were there?

10 A. Just one.

11 Q. And did the path of that road remain
12 the same the entire time that you were working at
13 Sauer's Landfill?

14 A. Yes, ma'am.

15 Q. How close was the trench to the road?

16 A. Forty or 50 feet.

17 Q. In the excerpt from the transcript
18 that you read, Mr. Smith, you indicated that the
19 trench was approximately 20 feet deep?

20 A. Yes.

21 Q. I think in this portion of the

1 transcript, you also expressed a concern that if
2 the truck drivers weren't careful, they could
3 roll into the trench; is that correct?

4 A. Yes.

5 Q. Was that also a concern that you had
6 when you were operating the bulldozer at Sauer's
7 Landfill?

8 A. Not necessarily, no.

9 Q. When you were operating the bulldozer,
10 did you actually go down into the trench, or what
11 would you do?

12 A. I would go down in and back out.

13 Q. You went all the way to the bottom of
14 the trench?

15 A. All the way in and out, yes.

16 Q. Let me go back a minute. Could you
17 just give us an example of what would happen when
18 a truck brought a load to the trench?

19 A. He would sort of back up to the trench
20 on top and dump his load, and I would push it
21 down through the trench and compact it.

1 Q. The truck driver would dump the load
2 at the surface as opposed to just pouring it down
3 into the trench?

4 A. Yes, ma'am.

5 Q. And then you would go down into the
6 trench and compact it. What did that involve?

7 A. Just spreading it out and rolling
8 backwards and forth over it.

9 Q. For a given load or a typical load
10 that had been dumped in that trench,
11 approximately how long would you say it took for
12 you to get down into the trench, compact the load
13 and get back out of the trench?

14 A. Five, ten seconds.

15 Q. Would you remain in the trench while
16 loads were being dumped into the trench ever, or
17 did you always leave the trench after you
18 compacted the load?

19 A. Leave it and come back to the top.

20 Q. Actually I should have asked you
21 before that, were there ever times when drivers

1 would dump their loads directly down into the
2 trench as opposed to dumping it on the edge?

3 A. Possibility, yes.

4 Q. Would that have been an infrequent
5 occurrence?

6 A. No.

7 MR. RYAN: Do you understand. She
8 said infrequent?

9 Q. Did that occur frequently?
10 Approximately how often would you say that
11 drivers would dump their loads directly down into
12 the trench as opposed to dumping them at the top
13 of the trench?

14 A. Maybe once a day or something one
15 would back down in and dump it.

16 Q. When you were down in the trench, were
17 you able to see what was going on in the
18 landfill?

19 A. Yes.

20 Q. How is that possible, Mr. Smith?

21 A. Well, see, I was sitting up about ten

1 or 12 feet up in the air. I had a high machine.

2 Q. So the entire time that you were down
3 in the trench, you were able to see what was
4 going on at the landfill?

5 A. Yes.

6 Q. When you say you were 10 to 12 feet in
7 the air, was the seat of the bulldozer 10 to 12
8 feet in the air so that your head was higher, or
9 would you say your head was 10 to 12 feet in the
10 air?

11 A. No. It was, I would say, 10 feet up
12 to the seat, maybe 12.

13 Q. There are a number of places, Mr.
14 Smith, in your affidavit and in the transcript
15 where you indicate that the trench was located
16 north of what became Bayview Avenue. What is the
17 basis for that statement? How are you sure that
18 the trench was located north of what became
19 Bayview?

20 A. Mostly by the railroads.

21 MR. KARABA: I couldn't hear his

1 answers.

2 MR. RYAN: Mostly by the railroads.

3 Q. I understand that you actually visited
4 the site several years ago, I believe, with a Ms.
5 Gwen Walsh. Do you recall that?

6 A. Yes, I do.

7 Q. And I understand from your transcript
8 that when you went to the site with Ms. Walsh,
9 you essentially indicated where the trench was
10 located; is that correct?

11 A. Yes, ma'am.

12 Q. The statements that you made in your
13 affidavit and in the transcript that the trench
14 was located north of Bayview based upon what you
15 saw when you went to the site with Ms. Walsh?

16 A. Yes, ma'am.

17 Q. Did the property look different when
18 you visited with Ms. Walsh from how it looked
19 when you were actually working there?

20 A. Yes, it did.

21 Q. And Bayview Avenue was not there or

1 did not exist when you were working at the
2 landfill; is that correct?

3 A. Yes, ma'am.

4 Q. Do you know, Mr. Smith, whether
5 Bayview Avenue was built where the road that lead
6 into the landfill was located?

7 A. No, it wasn't.

8 Q. Do you know whether Bayview was built
9 north or south of that road? Let me ask it
10 differently. Are you familiar with Patterson
11 High School?

12 A. Yes, I am.

13 Q. Would you say that Bayview Avenue was
14 constructed closer to Patterson High School than
15 the road that was at the landfill when you worked
16 there?

17 A. Yes.

18 Q. Again, paragraph seven of your
19 affidavit indicates that Fritz Sauer only allowed
20 Robb Tyler drivers to dump in a specific portion
21 of Sauer's dump. Do you know why Mr. Sauer

1 limited the dumping area for Tyler's drivers?

2 A. No, I don't know why he did that.

3 Q. Now, turn your attention to paragraph
4 8 of your affidavit, Mr. Smith. If you would
5 review that paragraph, please.

6 A. (Perusing.)

7 Q. Is there anything about paragraph 8
8 that you would change or you recall differently
9 today, Mr. Smith?

10 A. No, ma'am.

11 Q. Do you recall who assigned you to
12 operate the bulldozer?

13 MR. RYAN: From Sauer's place or from
14 Robb Tyler?

15 Q. Did anyone from Robb Tyler tell you
16 where to work when you went to Sauer's Landfill?

17 MR. RYAN: To make sure, she is not
18 asking you who from Robb Tyler told you to go to
19 Sauer's dump, but did somebody from Robb Tyler
20 tell you exactly where at Sauer's dump to put the
21 material?

1 MS. CASANO: Yes.

2 A. No.

3 Q. Did someone associated with Fritz
4 Sauer tell you where to put the material at
5 Sauer's dump?

6 A. Yes, ma'am.

7 Q. And who was that?

8 A. Fritz Sauer's.

9 Q. Is Fritz Sauer's also known as Fred
10 Sauer, Jr., do you know?

11 A. No, I don't know.

12 Q. I believe that you testified during
13 the earlier interview, Mr. Smith, that the window
14 period after Rosedale closed and before Norris
15 Farms opened was the only time when you worked at
16 Sauer's Landfill; is that correct?

17 A. Yes, ma'am.

18 Q. And I believe you also indicated that
19 to your knowledge, no one else employed by Robb
20 Tyler operated a bulldozer at Sauer's Landfill;
21 is that correct?

1 A. That is correct.

2 Q. During the time that you were
3 operating the bull dozer at Sauer's Landfill, did
4 you ever take a day off?

5 A. I don't remember.

6 Q. Is it possible?

7 A. It is possible, yes.

8 Q. Do you recall that you ever took a
9 sick day when you were operating the bulldozer at
10 Sauer's Landfill?

11 A. No.

12 Q. Does that mean that you don't remember
13 whether you took a sick day or you did not take a
14 sick day?

15 A. I don't remember taking any sick
16 days.

17 Q. But you may have?

18 A. I could have, yes.

19 Q. Do you have to have a special license,
20 Mr. Smith, to operate a bulldozer?

21 A. No, ma'am.

1 Q. Do you have to have any special
2 training?

3 A. I would say yes.

4 Q. Did you receive any training on how to
5 operate a bulldozer?

6 A. At 68th Street.

7 Q. And that was training given to you by
8 someone employed by Robb Tyler?

9 A. Yes.

10 Q. Let me ask you this. When you were at
11 Sauer's Landfill, were you actually operating a
12 bulldozer or a front-end loader?

13 A. A bulldozer.

14 Q. What kind of training do you need in
15 order to be able to operate a bulldozer?

16 MR. RYAN: The question is a little
17 vague. I don't know if you mean legally or that
18 he feels a person would be competent to operate a
19 bulldozer.

20 Q. In order to be competent to operate a
21 bulldozer, what sort of training do you need?

1 A. Well, in my opinion, you just know how
2 to start it and stop it and how to operate the
3 blade on it.

4 Q. Do you think anybody who can drive a
5 car can drive a bulldozer or operate a
6 bulldozer?

7 A. I would say not.

8 Q. Would you say that extra training, if
9 you will, is required because operating a
10 bulldozer can be dangerous?

11 A. Yes, it can.

12 Q. And would you say that you really have
13 to pay attention to what you are doing when you
14 operate a bulldozer?

15 A. Yes, you do.

16 Q. Turning your attention to paragraph
17 nine of Exhibit 1, if you would review that,
18 please.

19 Q. Is there anything about paragraph nine
20 that you recall differently today, Mr. Smith?

21 A. No, ma'am.

1 Q. Is there anything about paragraph nine
2 that you would change?

3 A. No, ma'am.

4 Q. How could you tell which drivers were
5 Robb Tyler drivers when you were working at
6 Sauer's Landfill?

7 A. They had the name on the side of the
8 truck.

9 Q. And how could you tell which drivers
10 were subcontractors for Robb Tyler while you were
11 working at Sauer's Landfill?

12 A. Well, they had a name on their truck
13 too.

14 Q. The subcontractors would have Tyler's
15 name on their truck? Was that because Tyler
16 owned the trucks?

17 A. No. It was because they were leased
18 to Robb Tyler.

19 Q. Was Tyler's name placed upon every
20 truck that he leased from a subcontractor?

21 MR. RYAN: If you know.

1 A. I don't remember all of that.

2 MR. BRAGER: For the record, are you
3 talking about the subcontractor that drove for
4 Robb Tyler on a regular basis or a subcontractor
5 that did not drive for Tyler on a regular basis?

6 MS. CASANO: Well, let me ask you
7 this. In paragraph nine of your affidavit, when
8 you state that you personally saw the Robb Tyler,
9 Inc., drivers and subcontractors unload the
10 waste, what did you mean by subcontractors?

11 A. Guys like Larry Jendras that owned his
12 own truck, but he had Robb Tyler's rigs, I call
13 them, on his truck.

14 Q. And Mr. Jendras has Tyler's name on
15 his truck?

16 A. Yes.

17 Q. Was Mr. Jendras, to your knowledge,
18 generally speaking, treated the same as any
19 employee of Robb Tyler who drove a truck?

20 A. Yes, he was.

21 Q. Were there any other subcontractors

1 like Mr. Jendras whose names you remember?

2 A. Earl Boswell.

3 Q. Any others?

4 A. No.

5 MR. RYAN: Could we take a break now,
6 Pat?

7 MS. CASANO: Sure.

8 (Break taken.)

9 Q. I believe the last question I asked
10 you, Mr. Smith, was if you recall the names of
11 any of the subcontractors who worked for Robb
12 Tyler, and you indicated Earl Boswell. Do you
13 remember any other subcontractors besides Mr.
14 Boswell and Mr. Jendras?

15 A. No, I don't.

16 Q. During the time that you were working
17 at Sauer's Landfill, as I understand your
18 previous testimony, Sauer also had someone
19 operating a bulldozer at the landfill?

20 A. Yes, ma'am.

21 Q. On a typical day then, would there

1 have been two bulldozers operating at Sauer's
2 Landfill?

3 A. Yes.

4 Q. Was there ever a time when you were
5 working at Sauer's Landfill when there were more
6 than two bulldozers working at the landfill?

7 A. No, ma'am.

8 Q. When you were working at -- do you
9 know who operated the bulldozer for Sauer while
10 you were working at the landfill?

11 A. Yes, ma'am.

12 Q. Who were those people?

13 A. Luke Sauer.

14 Q. Anyone else?

15 A. That is all.

16 Q. Did you ever see anyone other than
17 Luke Sauer and yourself operating any kind of
18 earth-moving equipment at Sauer's Landfill when
19 you were working there?

20 A. No, ma'am.

21 Q. When drivers brought loads to Sauer's

1 Landfill while you were there, how did they know
2 where to dump?

3 A. Well, they always had to see me and
4 dump where I was pushing trash.

5 Q. All the drivers?

6 A. Just the Robb Tyler drivers.

7 Q. Was there anyone who worked as a
8 spotter at Sauer's Landfill while you were
9 there? I'm using spotter to mean someone who
10 would tell drivers where to go.

11 A. Yes, ma'am, they was.

12 Q. Do you recall who that person or
13 persons was or were?

14 A. Sometimes Mike Cefaloni would do that,
15 and then sometimes it was a boy named Junior.
16 That is all I know.

17 Q. I take it that you know who Mike
18 Cefaloni was?

19 A. Yes, ma'am.

20 Q. Did you know Mike Cefaloni well?

21 A. Yes, I did.

1 Q. How did you know Mike?

2 A. From working on the landfills.

3 Q. Did you see Mr. Cefaloni at landfills
4 other than Sauer's Landfill?

5 A. Yes.

6 Q. Where did you see him besides Sauer's
7 Landfill?

8 A. He used to dump over at 68th Street,
9 and then he dumped down at Norris's Farm.

10 Q. I understand from the transcript of
11 your previous testimony that you do not know who
12 Mr. Cefaloni's customers were; is that correct?

13 A. That is correct.

14 Q. During the time that you were working
15 at Sauer's Landfill, approximately how many
16 trucks per day do you recall dumped their loads
17 where you were working?

18 MR. KARABA: Objection. We need a
19 foundation as to time frame here.

20 Q. You can answer the question.

21 A. I would say approximately 30 of the

1 Robb Tyler trucks.

2 Q. What types of trucks were they?

3 A. Some would be 40-yard compaction units
4 and some would be just 20 to 40-yard open tubs.

5 Q. I'm sorry, 20 to 40-yard?

6 A. Open and 30-yarders, too.

7 Q. Typically would the trucks be full
8 when they came to the landfill?

9 A. Yes, ma'am.

10 Q. Do you recall how many of the 40-yard
11 trucks Tyler had during the time that you were
12 working at Sauer's Landfill?

13 A. No, because he had all different kinds
14 of bodies.

15 Q. Can you tell us whether he had more
16 trucks that were at least 20-yard containers or
17 bigger than smaller trucks? Did you follow that?

18 A. What?

19 Q. Were most of Tyler's trucks at least
20 20 yards or bigger?

21 A. Yes. Yes.

1 Q. Directing your attention to Exhibit 2,
2 page 14, 10, to page 17, line 16.

3 Q. Is there anything about the testimony
4 that you just read, Mr. Smith, that you recall
5 any differently today?

6 A. No, ma'am.

7 Q. During the time that you worked at
8 Sauer's Landfill, Mr. Smith, I believe in your
9 earlier testimony you indicated that you worked
10 from approximately 7:30 a.m. to 8 p.m. in the
11 evening; is that correct?

12 A. Yes, ma'am.

13 Q. On a typical day, did you take any
14 breaks from work? Did you take a lunch break,
15 for example?

16 A. A lunch break.

17 Q. Approximately, for example, how long
18 would your lunch break have been?

19 A. It would depend on how busy. If it
20 was real busy, it might be ten minutes. If I had
21 a little extra time, it might be a half hour.

1 Q. Where did you go for lunch?

2 A. It was a lunch wagon that came in on
3 the job.

4 Q. So typically you remained at the
5 landfill?

6 A. Yes, ma'am.

7 Q. Did you ever leave the landfill to go
8 to lunch?

9 A. No, ma'am.

10 Q. Now, I have to ask a personal
11 question. Please don't be offended. Did you
12 take bathroom breaks when you were working at the
13 landfill?

14 A. Yes, but it was usually beside my
15 bulldozer.

16 Q. Would you take your brakes at the same
17 time as the other bulldozer operator?

18 A. Sometimes, yes.

19 Q. Were there times when the other
20 bulldozer operator would continue to work while
21 you were on a break?

1 A. Yes.

2 Q. Did you ever take breaks to go get
3 something to drink other than at lunchtime?

4 A. No, ma'am.

5 Q. Would you take a container of water or
6 some other beverage with you on the bulldozer?

7 A. Yes, ma'am.

8 Q. Were you instructed by anyone to keep
9 an eye on Robb Tyler drivers and subcontractors
10 when they came to Sauer's Landfill in order to
11 make sure that they dumped where they were
12 supposed to dump?

13 A. Yes, ma'am.

14 Q. And who told you to do that?

15 A. Fritz Sauer's and I believe Al Tyler.

16 Q. Do you recall whether that was
17 something that you were told before you started
18 to work at Sauer's Landfill or after you had
19 started to work at Sauer's Landfill?

20 A. It would have been about the same
21 time.

1 Q. Was there ever a time when a driver
2 who was not a Robb Tyler driver and not a Robb
3 Tyler subcontractor dumped where you were working
4 at Sauer's Landfill?

5 A. No, ma'am.

6 Q. Do you recall when you were working at
7 Sauer's Landfill approximately how many trucks
8 all together came to the landfill on a typical
9 day?

10 A. No, I don't.

11 Q. Do you recall whether there was ever a
12 time when you were working at Sauer's Landfill
13 when trucks were lined up waiting to dump at the
14 landfill?

15 A. Not that I recall.

16 Q. Were there ever times when more than
17 one truck dumped loads at the same time by where
18 you were working?

19 A. Yes.

20 Q. Did that happen frequently?

21 A. Yes.

1 Q. Would you say that you had two or more
2 trucks dumping at the same time more often than
3 you only had one truck dumping a load?

4 A. No, not necessarily.

5 Q. Do you recall any time when Robb Tyler
6 drivers and subcontractors were lined up waiting
7 to dump by where you were working and Luke Sauer
8 was operating the bulldozer and didn't have
9 anyone waiting to dump by him?

10 A. I might have had as much as three
11 trucks at one time, and I could only dump two at
12 a time and one would have to wait.

13 Q. Why could you only handle two at a
14 time?

15 A. Well, that was as wide as my area was
16 for a time.

17 Q. Are you referring to the trench?

18 A. Yes, ma'am.

19 Q. When you had two trucks dumping at the
20 same time, would one be on one side of the trench
21 and the other be on the other side of the

ORIGINAL
(Recd)

1 trench?

2 A. No, ma'am. They would both be right
3 backed in side by side.

4 Q. Turning your attention to Exhibit 2 on
5 page 124, line 10, to page 125, line 21.

6 MR. MASUR: What did you say?

7 MS. CASANO: 125, line 21.

8 A. (Perusing.)

9 Q. The excerpt of the transcript that you
10 just read indicates, Mr. Smith, that there were
11 times when you would arrive at Sauer's Landfill
12 and find that drivers had dumped loads before you
13 arrived; is that correct?

14 A. Yes, ma'am.

15 Q. And this part of the transcript refers
16 to loads that were dumped at the part of the
17 landfill where you were working?

18 A. Yes, ma'am.

19 Q. Do you recall any times when you went
20 to the Sauer's Landfill where you saw that loads
21 had been dumped on the part of the landfill where

1 Sauer's operator was working before you arrived
2 in the morning?

3 A. No, ma'am.

4 Q. Was there anything at Sauer's Landfill
5 to prevent people from dumping on any part of the
6 landfill before a bulldozer operator arrived in
7 the morning?

8 A. Well, yes, the gates would still be
9 locked.

10 Q. Do you know who opened the gates?

11 A. Fritz Sauer's.

12 Q. Turning your attention to paragraph 11
13 of Exhibit 1. Is there anything about paragraph
14 11 that you recall differently today, Mr. Smith?

15 A. No.

16 Q. Do you recall whether the trench where
17 you were working at Sauer's Landfill was filled
18 by the time you left Sauer's Landfill?

19 A. No, ma'am, I don't recall that.

20 Q. And it is your testimony that, so far
21 as you know, Robb Tyler drivers and

1 subcontractors only dumped in the trench where
2 you were working?

3 A. Yes, ma'am.

4 Q. When you went to the property with Ms.
5 Walsh, did you make any kind of estimate as to
6 how far away from Bayview Avenue the trench was
7 located?

8 A. I don't remember if I did or not.

9 Q. If you had to guess or estimate, how
10 far do you think the trench where you worked at
11 Sauer's Landfill was from the part of the
12 property that ultimately became Bayview Avenue?
13 Would you have any idea?

14 A. I would say maybe 100 yards or
15 better.

16 Q. How far do you think the trench was
17 from the railroad tracks?

18 A. Maybe 200 yards.

19 Q. Turning your attention to paragraph 12
20 of Exhibit 1.

21 A. (Perusing.)

1 Q. Is there anything in paragraph 12, Mr.
2 Smith, that you recall differently today?

3 A. No.

4 Q. And you are familiar with the
5 Patterson High School building?

6 A. Yes, ma'am.

7 Q. Approximately how close would you say
8 that Fritz's dumping operation came to the
9 Patterson High School building?

10 MR. RYAN: To the building itself or
11 the property?

12 MS. CASANO: The building itself.

13 MR. RYAN: If you know.

14 A. I wouldn't know that, because that was
15 a right good distance.

16 Q. As you recall the landfill when you
17 were working there, was it surrounded by trees or
18 other vegetation?

19 A. Part of it was.

20 Q. Did you ever see Sauer's bulldozer
21 operator pushing over trees?

ORIGINAL
Filed
8

1 A. No, I didn't.

2 Q. How close would you say that Sauer's
3 dumping operation came to the trees?

4 MR. RYAN: You mean dumping
5 operations, do you mean the landfill itself, or
6 do you mean when he saw Luke Sauer on the
7 bulldozer?

8 MS. CASANO: The landfill itself,
9 start there.

10 MR. RYAN: I think he said that
11 actually trees formed part of the boundaries.

12 A. Yes.

13 Q. How close did you see Sauer's
14 bulldozer operator working to the trees?

15 A. He wasn't working close to any trees
16 when I was there.

17 Q. He was not?

18 A. No.

19 Q. In paragraph 12 of your affidavit, you
20 indicate that Fritz's dumping operation was a few
21 hundred feet south of where you were working

ORIGINAL
(589)

1 within shouting distance. Did you mean shouting
2 distance while you were operating the bulldozer?

3 A. No.

4 Q. That would have been shouting distance
5 when the equipment wasn't running?

6 A. Yes.

7 Q. What would you regard shouting
8 distance to be?

9 MR. RYAN: You want him to give a
10 specific number of feet?

11 MS. CASANO: Approximately feet or
12 yards.

13 MR. RYAN: If you have any way to make
14 that guess, go ahead.

15 A. I would say maybe 100 yards.

16 Q. You go on to say in paragraph 12 of
17 the affidavit that while you were working on
18 Sauer's dump, you could see what was being dumped
19 on the south part of Sauer's dump, so that
20 whatever shouting distance may have actually been
21 in terms of feet or yards, you were close enough

ORIGINAL
(Rec'd)
60

1 so that you could see what was coming out of
2 trucks?

3 A. Yes.

4 Q. When you say that you could see what
5 was coming out of trucks, do you mean that you
6 could see generally that it was a load of dry
7 trash, for example, or were you close enough that
8 you could see specific things like drums or paint
9 pales or anything like that?

10 A. Yes, ma'am.

11 Q. Were you close enough that you could
12 see drums?

13 A. Yes.

14 Q. You were close enough that you could
15 have seen something as small as a paint pale?

16 A. Oh, yes.

17 Q. Turning your attention to paragraph
18 14? Actually I'm sorry, paragraph 13 of your
19 affidavit. You indicate in the first sentence
20 that Sauer had a driver who was called The
21 Guinea. Do you know who The Guinea was, what his

1 given name was?

2 A. Mike Cefaloni.

3 Q. Turning your attention to paragraph 14
4 of your affidavit, if you would review that,
5 please?

6 A. (Perusing.)

7 Q. Is there anything in paragraph 14 that
8 you recall differently, Mr. Smith?

9 A. No, ma'am.

10 Q. And is it correct to say that
11 paragraph 14 is based on what you saw when you
12 were working at the landfill?

13 A. Yes, ma'am.

14 Q. Do you know who Sauer's customers
15 were?

16 A. No, I don't.

17 Q. You indicate in paragraph 14 that
18 Bohager took trash to the part of the landfill
19 where Sauer's people were working while you were
20 working at the landfill. How do you know that?

21 A. The name on his truck.

1 Q. Do you remember the names of any of
2 the drivers for Bohager who took trash to Sauer's
3 Landfill?

4 A. I know one name and that guy was
5 called Ham.

6 Q. I should have mentioned this earlier,
7 but I forgot. When I saw trash or waste, I'm
8 using those terms interchangeably, and I'm using
9 them to cover essentially anything that somebody
10 was throwing away or getting rid of.

11 Turning your attention to paragraph 15
12 of your affidavit, if you would review that,
13 please.

14 A. (Perusing.)

15 Q. Is there anything in paragraph 15 that
16 you recall differently today, Mr. Smith?

17 A. No, ma'am.

18 Q. How did you know Chevrolet Ray?

19 A. I knew him from 68th Street.

20 Q. Did you ever talk to him?

21 A. Yes, ma'am.

68

1 Q. Did he tell you that he was employed
2 by General Motors Corporation?

3 A. Yes, ma'am.

4 Q. Turning your attention to Exhibit 2,
5 page 109, beginning with line 13 and reading to
6 page 111, line 4. Actually, let me expand that a
7 little bit, if you would read to page 113, line
8 7.

9 A. (Perusing.)

10 Q. Is there anything in the testimony, in
11 the portion of the transcript that you just read,
12 Mr. Smith, that you recall differently today?

13 A. No.

14 Q. How often do you recall seeing
15 Chevrolet Ray at Sauer's Landfill?

16 A. At least once a day.

17 Q. Did you ever see him more than once a
18 day?

19 A. No.

20 Q. Approximately how many drums in a
21 load, do you know approximately how many drums in

1 a load Chevrolet Ray would bring to the
2 landfill?

3 A. No, I don't.

4 Q. Do you recall what kind of truck he
5 drove?

6 A. It was a Chevrolet.

7 Q. Do you recall if it was the size of a
8 pickup truck?

9 A. No, it was a dump truck, single-axle
10 dump truck.

11 Q. Do you know approximately how many
12 drums a single-axle dump truck can hold?

13 A. Probably about nine or ten.

14 Q. Do you remember whether the truck was
15 labeled with anyone's name?

16 A. I don't think so. I don't remember,
17 but I don't think so.

18 Q. Do you recall whether the truck
19 usually was full of drums when you saw it?

20 A. No.

21 Q. Does that mean that you don't remember

1 whether it was full or typically the truck would
2 not be full? Let me ask the question again. Was
3 the truck usually full when you saw it?

4 A. No, not all the time, no. Sometimes
5 it would be and sometimes it wouldn't.

6 Q. The testimony that you read indicates
7 that you smelled paint thinner or smelled like
8 paint thinner from the drums that Chevrolet
9 hauled to the landfill. Did you ever see the
10 contents of the drums?

11 A. Yes. Yes, I seen the contents of the
12 drums.

13 Q. And what did it look like?

14 A. It was a liquid.

15 Q. Something that could be poured?

16 A. Yes, like parts to clean motors with,
17 it was a liquid form.

18 Q. Turning to page 155 of Exhibit 2,
19 beginning on line 21 and going over to page 156,
20 line 55, you testified earlier that some of the
21 drums had a sludge in it. Is it your

1 recollection today that some of the drums would
2 have a sludge in it?

3 A. Yes.

4 Q. Do you happen to know what the source
5 of that sludge was?

6 A. No, it was just real thick-looking
7 stuff.

8 Q. Okay.

9 Q. So far as you know, the drums that
10 Chevrolet Ray brought to Sauer's Landfill came
11 from General Motors?

12 A. Yes, ma'am.

13 Q. Do you know which General Motors
14 facility was the source of the drums?

15 A. I think it was the one downtown here
16 in the City, not from Broening Highway.

17 Q. Not from Broening Highway. I'm not
18 familiar with the General Motors facility
19 downtown.

20 A. I'm not really either.

21 Q. Turning to Exhibit 2, page 163, line

1 21 to page 164, line 15. That excerpt from your
2 testimony indicates that there were times when
3 you saw Chevrolet Ray leave drums at Sauer's
4 Landfill. Is it your recollection today that you
5 saw Chevrolet Ray leave drums at Sauer's
6 Landfill?

7 A. Yes, ma'am.

8 Q. Do you happen to know what determined
9 whether Chevrolet Ray would leave the drums at
10 Sauer's Landfill or whether he would take them
11 back?

12 A. Most of the time he taken them back
13 with him.

14 Q. Do you know why he would sometimes
15 leave drums at the landfill?

16 A. It was stuff that he couldn't get to
17 dump out and he would just throw the whole drum.

18 Q. Do you know what happened to those
19 drums after Chevrolet Ray dumped them at Sauer's
20 Landfill?

21 A. Yes, they were smashed up and put in

1 the dump.

2 Q. Turning your attention to Exhibit 1,
3 paragraph 16 -- before you read that, Mr. Smith,
4 who snatched up the drums and put them into the
5 dump?

6 A. Luke Sauer's.

7 Q. If you would read paragraph 16 of your
8 affidavit now, please.

9 Q. Is there anything in paragraph 16, Mr.
10 Smith, that you recall differently today?

11 A. No.

12 Q. Turning your attention to Exhibit 2,
13 page 149 beginning on line 13. Unless somebody
14 has an objection, in order to try to speed things
15 up, instead of asking Mr. Smith to read parts of
16 the transcript, I'm going to summarize them and
17 ask him if that is what his recollection is
18 today, or at least summarize the parts that I
19 need and ask him if that is what his recollection
20 is today, just for purposes of trying to speed
21 things up.

69

1 Does anybody have a problem with
2 that?

3 (No response).

4 MS. CASANO: Okay.

5 Q. Beginning on page 149 and going over
6 to page 154, you earlier testified that it was
7 Mr. Cefaloni who you saw bringing Western
8 Electric waste to Sauer's Landfill; is that
9 correct?

10 A. Yes.

11 Q. Did Mr. Cefaloni tell you that the
12 waste came from Western Electric?

13 A. No. It was just that I knowed the
14 trash when it came in.

15 Q. And how did you know that it was
16 Western Electric trash?

17 A. From the contents of it that used to
18 dump at 68th Street.

19 Q. And what were those contents?

20 A. Bales of bags. Sometimes it would be
21 one or two bales of wire in it and just the

1 normal trash.

2 Q. What did the wire look like?

3 A. Just black telephone wire with rubber
4 over steel wire.

5 Q. Did you ever see any drums in any of
6 the loads that Mr. Cefaloni brought from Western
7 Electric?

8 A. No.

9 Q. Did you ever see any liquids in any of
10 the loads that Mr. Cefaloni brought from Western
11 Electric?

12 A. No, ma'am.

13 Q. Did you ever see any sludges in any of
14 the loads that Mr. Cefaloni brought from Western
15 Electric?

16 A. No, ma'am.

17 Q. Did you ever see anyone other than Mr.
18 Cefaloni bring in waste from Western Electric to
19 Sauer's Landfill?

20 A. Yes.

21 Q. Who would that have been?

1 A. It would have been Bohager.

2 Q. And again, you don't remember the name
3 of the driver aside from Ham?

4 A. That is all the name I know.

5 Q. Was it Ham who was the Bohager driver
6 who brought the Western Electric waste?

7 A. Sometimes it was and sometimes it
8 might be somebody else.

9 Q. Did you ever see Luke Sauer hauling
10 waste from Western Electric into Sauer's
11 Landfill?

12 A. No.

13 Q. In your affidavit and in the
14 transcript, you stated that the Western Electric
15 waste was dumped south of what became Bayview
16 Avenue; is that correct?

17 A. Yes, ma'am.

18 Q. And is that your recollection today?

19 A. Yes, ma'am.

20 Q. Turning your attention to page 164 of
21 Exhibit 2 and reading over to page 166 of

1 Exhibit 2, you indicated that there were times
2 when you got a close look at the Western Electric
3 wire because it would get caught in the
4 bulldozer; is that correct?

5 A. Yes.

6 Q. And you also indicate on page 166 that
7 what you saw was black insulation covering
8 copper-coated steel wire; is that correct?

9 A. Yes. Yes.

10 Q. Approximately how often do you recall
11 seeing the Western Electric waste brought to
12 Sauer's Landfill?

13 A. You mean in the Bohager trucks?

14 Q. Well, let's split it into two parts.
15 How often did you see Bohager bring Western
16 Electric waste to Sauer's Landfill?

17 A. Maybe twice a week.

18 Q. And how often did you see Cefaloni
19 bring Western Electric waste to Sauer's
20 Landfill?

21 A. I think that was every day.

73

1 Q. Would it have been more than once a
2 day?

3 A. No.

4 Q. Turning your attention to page 24 of
5 Exhibit 2 from line 3 to line 13, you testified
6 that Sauer had four drivers: Mike Cefaloni; a
7 John whose last name you could not remember, Luke
8 Sauer, and sometimes Fritz Sauer would drive a
9 truck as well. Is that your recollection today
10 that those were the four drivers who worked for
11 Fred Sauer?

12 A. Yes, ma'am.

13 Q. Were there any other drivers who
14 worked for Sauer whom you recall today?

15 A. No, ma'am.

16 Q. Turning your attention to page 29 of
17 Exhibit 2 -- actually I'm going to scratch that
18 one. I think we have covered that.

19 Turning your attention to page 34,
20 line 13 and going over to page 36, line 13, you
21 testified that Sauer drivers would dump at Robb

1 Tyler's Landfill and Tyler drivers would dump at
2 Sauer's Landfill; is that correct?

3 A. Yes.

4 Q. And did that happen before the
5 Rosedale Landfill closed?

6 A. Yes.

7 Q. Let me ask it differently. Would
8 Tyler's drivers use Sauer's Landfill before
9 Rosedale closed?

10 A. Once in a while one of the
11 owner/operators might go in there and dump a
12 load, but most of the time, Sauer's came to Robb
13 Tyler landfill.

14 Q. I'm sorry, do you mean Sauer came to
15 Robb Tyler's Landfill or Tyler's drivers came to
16 Tyler's landfill?

17 A. Tyler's drivers came to Tyler's
18 landfill.

19 Q. Are you saying that Sauer used Tyler's
20 landfill more often than Tyler used Sauer's
21 Landfill, to your knowledge?

1 A. Yes. Yes.

2 Q. How would you know that a Tyler driver
3 had used Sauer's Landfill?

4 A. Well, again, Earl Boswell was the one
5 that used it the most. He would always tell us,
6 you know, that he could run loads in there
7 earlier than he could at Robb Tyler's Landfill.

8 Q. Do you know Larry Jendras?

9 A. Yes, I do.

10 Q. Do you ever recall talking to him
11 about using Sauer's Landfill before you went to
12 work at Sauer's Landfill?

13 A. No.

14 Q. Do you know Andrew Ragsdale?

15 A. Yes, I do.

16 Q. Do you recall ever talking to him
17 about using Sauer's Landfill before you went to
18 work at Sauer's Landfill?

19 A. No, I don't recall that.

20 Q. Do you know whether any Robb Tyler
21 drivers used Sauer's Landfill after Norris Farms

1 opened?

2 A. No, I don't.

3 Q. I believe I asked you this earlier but
4 I'm not sure. Do you recall correctly that you
5 testified that you do not know who Michael
6 Cefaloni's customers were other than Western
7 Electric?

8 A. Yes.

9 Q. I thought I had the page of the
10 transcript marked, but I'm not finding it where I
11 thought I had it marked. I believe you testified
12 earlier that Fritz Sauer and Robb Tyler were
13 friends?

14 A. Yes.

15 Q. How do you know that?

16 A. They talked an awful lot and Fritz
17 used to come over and see Rob every once in a
18 while. They were just good friends.

19 Q. Approximately how often would you see
20 Fritz at Tyler's Landfill?

21 A. You mean Fritz himself?

1 Q. Right.

2 A. Maybe once a month.

3 Q. Do you know if Robb Tyler ever went to
4 Sauer's Landfill, Robb Tyler himself?

5 A. That I don't know.

6 Q. Did Robb Tyler ever drive a truck?

7 A. I don't know that.

8 MR. RYAN: Pat, we need to take a
9 little break.

10 MS. CASANO: Okay.

11 (Break taken.)

12 Q. Mr. Smith, directing your attention to
13 page 39 of Exhibit 2, beginning on line 14 and
14 continuing over to page 41, line 11. As I
15 understand your previous testimony, you stated
16 that you only went to Sauer's Landfill once
17 before you started to work there; is that
18 correct?

19 A. Yes.

20 Q. And you went there that one time to
21 buy a car from him?

1 A. Yes.

2 Q. A couple of people have testified or
3 indicated to us that they would go to Sauer's
4 Landfill at the end of the workday to have a few
5 beers. Did you ever go to Sauer's Landfill for
6 that purpose?

7 A. No, ma'am.

8 Q. Turning to page 54, line 6 of
9 Exhibit 2 and reading over to page 55, line 13,
10 you indicated at that point in your previous
11 testimony that the site that used to be Sauer's
12 Landfill looks different now or from when you
13 last saw it when you went with Ms. Walsh,
14 compared to what it looked like when you were
15 working there.

16 And in particular, on page 54 at line
17 11, you said, I can see where the old river used
18 to be at when the dump was in operation there.
19 What was the old river to which you were
20 referring?

21 A. I don't know how this word "river" got

1 in there.

2 Q. Do you think that is a typo?

3 A. It's got to be, because all the time I
4 have been there, I have never seen a river there.

5 Q. Could you read, then, on page 54 from
6 line 6 down to line 15 and see if you remember
7 what you actually said as opposed to old river.

8 A. (Perusing.) I think that must have
9 been the railroad tracks.

10 MS. CASANO: Why don't we mark this as
11 E. Smith Exhibit 3.

12 (Whereupon, Smith Deposition
13 Exhibit No. 3, sketch, marked.)

14 Q. Mr. Smith, I'm going to hand you a
15 document that has been marked E. Smith Exhibit 3
16 which appears to be a sketch of the area of
17 Sauer's Landfill.

18 MR. BLEICHER: Pat, there is a General
19 Motors Bates number on the bottom.

20 Q. Right. There is a General Motors
21 Bates number, and I believe what is a United

1 States Bates number when it was produced. Do you
2 presume correctly, Mr. Smith, that you have not
3 seen this sketch before?

4 A. Not this one, no.

5 Q. If you look at the middle of the
6 document, you will see a notation, Kane and
7 Lombard super fund site and then, above that,
8 there are a couple of notations, stream, culvert
9 stream.

10 Assuming that this sketch correctly
11 indicates that there was a stream located near
12 Sauer's Landfill at the time the landfill was
13 operating, is that what you would have been
14 referring to as the old river? Do you remember
15 ever seeing a stream near Sauer's Landfill?

16 A. No, ma'am, I never did see a stream
17 there.

18 MR. LINGAN: Pat, would you identify
19 the Bates stamps?

20 A. General Motors 001097 and the United
21 States Bates stamp number is 0000362.

1 MR. LINGAN: Thank you.

2 Q. Turning back to page 54, line 16
3 through line 21, you stated that they changed the
4 railroad and moved it in on the landfill some.
5 By that, did you mean that the railroad tracks
6 were actually moved and located to an area that
7 had been part of Sauer's Landfill?

8 A. Yes.

9 Q. Do you know when that change
10 occurred?

11 A. No, I don't.

12 Q. How do you know, Mr. Smith, that the
13 railroad tracks were moved?

14 A. I know from where they were sitting,
15 where they were at before.

16 Q. So it's strictly your recollection as
17 to where they were when the landfill was open?

18 A. And where they are at now.

19 Q. Turning your attention to page 66 of
20 Exhibit 2, beginning on line 6 and reading down
21 to line 18, you earlier testified that you did

1 not know when Sauer's Landfill closed; is that
2 correct?

3 A. That is right.

4 Q. Do you know whether Sauer's Landfill
5 continued to operate after Norris Farms opened?

6 A. I believe it did.

7 Q. And that reminds me of a question I
8 neglected to ask you earlier. Did Luke Sauer
9 work as a bulldozer operator for Fred Sauer the
10 entire time you were working at Sauer's
11 Landfill?

12 A. Yes, he did.

13 Q. Turning your attention to page 89 of
14 Exhibit 2, beginning with line 17 and reading
15 over to page 90, line 9, you testified that Allie
16 Tyler would stop by Sauer's Landfill maybe once
17 or twice a week during the time that you were
18 working there. Is that your recollection today?

19 A. Yes, ma'am.

20 Q. Do you know why Allie came to Sauer's
21 Landfill?

1 A. Not especially, to see if everything
2 was going all right.

3 Q. Earlier you testified, Mr. Smith, that
4 you didn't know who Cefaloni's customers were
5 except for Western Electric. Do you know whether
6 Western Electric was a customer of Fritz Sauer's
7 at the time that Cefaloni was hauling waste from
8 there, or was Western Electric a customer of Robb
9 Tyler's at that time?

10 A. It was a customer of Fritz Sauer's.

11 Q. To your knowledge, was Western
12 Electric a customer of Robb Tyler's at any point
13 during the 1960's?

14 MR. RYAN: He didn't begin there until
15 '64.

16 Q. I'm sorry, after you were hired from
17 1964 through the early 1970s, do you know if
18 Western Electric at any time during that period
19 was a customer of Robb Tyler's?

20 A. No, I don't.

21 Q. Of the ten people who used to work for

1 Robb Tyler who are still living, in your view,
2 who would have the best knowledge of who Robb
3 Tyler's customers were during the 1960s and early
4 1970s?

5 A. I wouldn't know. I honestly don't
6 know.

7 Q. When you were working for Robb Tyler
8 back in the 1960s, can you tell us who had the
9 most contact with Tyler's customers? Let me ask
10 it a little differently. Do you know who made
11 contracts with customers for Robb Tyler while you
12 were working for Robb Tyler?

13 A. The salesmen, I would say.

14 Q. Do you remember the names of any of
15 the salesmen?

16 A. No, I don't.

17 Q. Turning your attention to page 94 of
18 Exhibit 2 and reading over to page 96, line 1,
19 you testified earlier that the trench was full
20 when you left Sauer's Landfill. Is that
21 correct?

1 A. I can't be sure of that.

2 Q. Turning your attention to page 96 of
3 Exhibit 2 beginning with line 5 and reading over
4 to page 100, line 12. You testified earlier that
5 there was a little house on Sauer's Landfill and
6 during the time that you worked at Sauer's
7 Landfill, everyone other than the Robb Tyler
8 drivers and subcontractors dumped their loads
9 within approximately a 100-yard circle of that
10 little house; is that correct?

11 A. Yes.

12 MR. RYAN: Pat, just to be clear, he
13 also called it a little barricade or a little
14 cardboard box in the same testimony.

15 Q. And that is the spot where the spotter
16 worked?

17 A. Yes.

18 Q. I'm not clear how that worked, Mr.
19 Smith. From reading the transcript, it seemed to
20 me that the house would have been sitting on the
21 ground or the barricade would have been sitting

1 on the ground and dumping occurred around it.
2 Does that mean that during the time that you were
3 working on Sauer's Landfill, that the dump was
4 built up around the little barricade?

5 A. No.

6 Q. Could you explain?

7 A. The barricade would be sitting out to
8 itself, and the spotter would send the trucks,
9 like, down in this area to dump. Maybe 30 feet
10 away from where the little house was sitting.
11 They would dump down in there and then Sauer's
12 would push it away from them.

13 Q. And do you recall approximately how
14 far back from Kane Street that little house or
15 barricade was located?

16 A. From Kane Street, maybe 500 yards
17 back.

18 Q. Turning your attention to page 100 of
19 Exhibit 2, beginning on line 13 and reading over
20 to page 104, line 6. I'm going to read a small
21 part of that beginning with line 20.

1 "Question: So far, you have described
2 you dumping in a trench where you worked and an
3 area of approximately 100 yards around where the
4 other drivers were dumping. What about all the
5 other areas of the landfill, was no dumping at
6 all taking place?

7 "Answer: No, that was already filled
8 up.

9 "Question: It was already filled up?

10 "Answer: Uh-huh.

11 "Question: So it wasn't possible to
12 dump there anymore.

13 "Answer: That is right, you couldn't
14 dump there anymore."

15 Is there anything about that testimony
16 that you recall differently today, Mr. Smith?

17 A. No.

18 Q. Was it your impression or
19 understanding that the bare ground that you saw
20 when you were working at Sauer's Landfill was the
21 area that had already been landfilled?

1 A. Yes.

2 Q. And what was the basis of that
3 understanding or impression? Would it have been
4 the appearance of the ground, for example?

5 A. You mean for being full?

6 Q. Yes.

7 A. Yes.

8 Q. Did anyone ever tell you that other
9 parts of the landfill had been filled up?

10 A. Yes.

11 Q. And who would that have been?

12 A. That would have been Luke or Fritz,
13 either one.

14 Q. At page 102 of your transcript, you
15 indicated that there wasn't any fence around the
16 landfill; is that correct?

17 A. That is right, yes, ma'am.

18 Q. Do you recall ever seeing any signs
19 that said "no dumping" on any part of the
20 landfill or any part of the adjacent property, or
21 any adjacent property, for that matter?

1 A. No, ma'am.

2 Q. Do you know whether every part of the
3 landfill that you saw that had been filled in
4 before you started to work there was filled in by
5 Sauer or someone working for Sauer, Fritz Sauer?

6 A. Yes.

7 Q. Did anyone tell you that?

8 A. I don't know if anyone told me that,
9 but I just knew it had been filled in.

10 Q. You can't be certain whether it was
11 done by Fritz Sauer or somebody else, someone
12 other than an employee of Fritz Sauer?

13 A. No, from the time I knew Fritz, that
14 is where he was located at was right there.

15 Q. Do you know if anybody had a landfill
16 at Sauer's Landfill before Sauer did?

17 A. No.

18 Q. So someone else could have operated a
19 landfill for Sauer, but you wouldn't know about
20 it?

21 A. I wouldn't know about it.

1 Q. Turning to page 123 of the transcript,
2 beginning with line 3 and continuing over to page
3 124, line 1, you testified earlier that you know
4 Larry Jendras and that you consider him to be an
5 honest and truthful person; is that correct?

6 A. Yes.

7 Q. And is that your opinion of Mr.
8 Jendras today, that he is an honest and truthful
9 person?

10 A. Yes, ma'am.

11 Q. Turning to page 135 of Exhibit 2,
12 beginning on line 4 and reading to page 136,
13 line -- my notes indicate line 8, but I think I
14 may have made a mistake. No, I'm sorry, line 8,
15 that is correct. At that portion of the
16 transcript, you testified earlier that you know
17 Andrew Ragsdale and that you also consider him to
18 be a truthful and honest person; is that
19 correct?

20 A. Yes, ma'am.

21 Q. And is that your opinion of Mr.

1 Ragsdale today?

2 A. Yes, ma'am.

3 Q. Turning to page 131 of Exhibit 2,
4 beginning on line 21 and reading over to page
5 141, you were asked a series of questions
6 concerning statements made by Larry Jendras and
7 Andrew Ragsdale to the effect that they did not
8 dump in a trench when they dumped waste at
9 Sauer's Landfill? Do you recall that testimony?

10 A. Yes.

11 Q. And at the time, as is indicated in
12 this portion of the transcript, you indicated
13 that you could not explain why they would say
14 that they didn't dump in a trench when, so far as
15 you know, all the Robb Tyler drivers and
16 subcontractors were dumping in that trench while
17 you worked at Sauer's Landfill.

18 Are you able to explain today why Mr.
19 Jendras and Mr. Ragsdale's recollection is
20 different from yours?

21 A. No, ma'am, I cannot.

1 Q. Turning your attention to page 146 of
2 Exhibit 2, beginning on line 6 and reading to
3 page 147, line 20, you testified that you saw Mr.
4 Cefaloni bring drums to Sauer's Landfill and dump
5 them. Is that your whole recollection today?

6 A. Yes, it is.

7 Q. You also indicated at the same part of
8 the transcript that you didn't know where the
9 drums came from; is that correct?

10 A. That is right.

11 Q. Did you ever see anyone other than Mr.
12 Cefaloni and Chevrolet Ray bring drums to Sauer's
13 Landfill and dump the drums there?

14 A. No, I didn't.

15 Q. When you saw Mr. Cefaloni bring drums
16 to Sauer's Landfill, did you ever see him dump
17 the contents of the drums at the landfill?

18 A. No. They were usually empty drums.

19 Q. Do you recall today the source of the
20 drums that Mr. Cefaloni brought to Sauer's
21 Landfill?

1 A. Do you mean the kind of drums they
2 were?

3 Q. No, where the drums came from?

4 A. No, I don't.

5 Q. Turning your attention to page 1848 of
6 Exhibit 2, line 4 reading through line 14, you
7 testified that while you were working at Sauer's
8 dump, Robb Tyler owned the bulldozer that you
9 operated?

10 A. Yes, ma'am.

11 Q. And that is your recollection today?

12 A. Yes, ma'am.

13 Q. You also indicated that Robb Tyler
14 paid your salary while you were working at
15 Sauer's dump?

16 A. Yes, ma'am.

17 Q. Is that your recollection today?

18 A. Yes, it is.

19 Q. Turning your attention to page 159 of
20 Exhibit 2, beginning with line 18 and reading
21 over to page 161, line 18, you testified earlier

1 that Tyler's drivers would occasionally use
2 Sauer's Landfill before Rosedale closed, but that
3 you did not know where Tyler's drivers would dump
4 at Sauer's Landfill when they used it; is that
5 correct?

6 A. Yes, ma'am.

7 Q. That is your recollection today?

8 A. Yes.

9 Q. Mr. Smith, in your earlier testimony
10 you indicated that you would cover the trash in
11 the trench at the end of the day; is that
12 correct?

13 A. Yes, that is correct.

14 Q. Did you do that every day?

15 A. Yes.

16 Q. What did you use to cover the trash?

17 A. Dirt.

18 Q. Did you ever use anything other than
19 dirt?

20 A. No.

21 Q. Do you know what fly ash is?

1 A. Yes.

2 Q. Could you describe fly ash for us?

3 A. To the best of my knowledge, it's just
4 a dust.

5 Q. Is it fair to say that it is a fine
6 dust?

7 A. Yes, it is.

8 Q. Does it have a particular color?

9 A. Gray.

10 Q. Did you ever use fly ash to cover
11 trash at Sauer's dump?

12 A. Yes.

13 Q. Did someone haul the fly ash to
14 Sauer's dump?

15 A. Yes, they did.

16 Q. Do you know who hauled the fly ash to
17 Sauer's dump?

18 A. Yes.

19 Q. Who did?

20 A. A guy named Parker.

21 Q. Would that have been Warren Parker?

1 A. Yes, Warren Parker, yes, ma'am.

2 Q. Do you know where the fly ash came
3 from?

4 A. It came from Western Electric.

5 Q. Western Electric?

6 A. Yes.

7 Q. Do you know how Western Electric
8 generated the fly ash?

9 A. From the burning of coal, and it was
10 fly ash and cinders.

11 Q. Let me ask, are you sure you mean
12 Western Electric as opposed to Baltimore Gas &
13 Electric?

14 A. Gas & Electric.

15 Q. Did Mr. Parker tell you that that is
16 where the fly ash came from?

17 A. I don't remember if he did or not,
18 just that I heard people say that that is where
19 it came from.

20 Q. And how often did you use fly ash to
21 cover the trash at Sauer's Landfill?

44-397
JAN 19 1964
FBI - BALTIMORE

1 A. Not too often.

2 Q. How often did you see Parker bring fly
3 ash to Sauer's Landfill?

4 A. That wasn't too often either.

5 Q. Were there times when you saw Parker
6 bring fly ash to Sauer's Landfill and it was
7 dumped someplace other than where you were
8 working?

9 A. I can't be sure of that.

10 Q. When you were working at Sauer's
11 Landfill, did you ever hear or see a fire at the
12 landfill?

13 A. Yes.

14 Q. Do you know how the fire was
15 extinguished?

16 A. Yes.

17 Q. Was this one fire or more than one
18 fire?

19 A. One is all I remember.

20 Q. And how was that fire extinguished?

21 A. You scrape dirt up and put over top of

1 it.

2 Q. Did you see fly ash used to extinguish
3 the fire?

4 A. No.

5 Q. Do you recall what kind of truck
6 Parker drove?

7 A. I think they were Mack trucks, I'm not
8 sure. Dump trucks.

9 Q. How did you know Mr. Parker?

10 A. I think Luke Sauer's, or John Gephardt
11 one, told me who he was.

12 Q. Did you ever see him at Rosedale, him
13 being Mr. Parker?

14 A. Yes.

15 Q. Did you see Mr. Parker dumping fly ash
16 at Rosedale?

17 A. Yes.

18 Q. How often did you see him dumping fly
19 ash at Rosedale?

20 A. I don't know. He might dump three or
21 four loads a day.

1 Q. Do you know a gentleman by the name of
2 Albert Landay?

3 A. Is that the guy that owned the dump
4 that Fritz had?

5 Q. Yes.

6 A. I thought that was his name. Yes, I
7 knew him.

8 Q. Did you ever see him at Sauer's
9 Landfill?

10 A. Yes, I have seen him.

11 Q. Do you recall how many times you saw
12 him at Sauer's Landfill?

13 A. I think only once or twice.

14 Q. Did you ever speak to him when he was
15 at the landfill?

16 A. No.

17 Q. How did you know who Mr. Landay was?

18 A. Either Luke or Fritz one said that
19 that is who he was.

20 Q. Did you ever hear anyone say that Mr.
21 Landay had given instructions as to where dumping

1 was to take place?

2 A. No.

3 Q. Did you ever hear anything about Mr.
4 Landay complaining that waste had been dumped
5 where they should not have been dumped?

6 A. No, I didn't.

7 Q. Do you know a gentleman by the name of
8 Edward Azrael?

9 A. Not to my knowledge, I don't.

10 Q. Did you know Mrs. Landay?

11 A. No, I didn't.

12 Q. Did you know Mrs. Azrael?

13 A. No.

14 Q. Mr. Smith, was there an incinerator at
15 the Rosedale Landfill when you were working
16 there?

17 A. It was, but it wasn't in use then.

18 Q. And would that have been true for the
19 entire time you were working at Rosedale that the
20 incinerator was not in use?

21 A. Yes, ma'am.

1 Q. Was there something called a burner at
2 Rosedale when you were working there?

3 A. I don't really understand what you
4 mean by that.

5 Q. Yesterday we deposed Luke Sauer, and
6 he indicated that there was something called a
7 burner at Rosedale, which I took to mean was an
8 incinerator, and I just want to check and make
9 sure that, to your knowledge, there wasn't
10 something other than an incinerator that was
11 called a burner at Rosedale that was used for
12 burning drums, for example?

13 MR. CROWE: Do you mean burning
14 liquids?

15 Q. Burning the contents, I'm sorry.

16 A. Not at Rosedale, no. That was at the
17 farm.

18 MR. CROWE: That was where?

19 MR. RYAN: At the farms.

20 Q. Did you ever see the contents of drums
21 dumped at Rosedale as opposed to the drums

1 themselves? Let me ask it a little differently.

2 Was there ever a time when you were
3 working at Rosedale where you saw someone bring
4 in a load of drums, pour out the contents of the
5 drums and then take the drums away?

6 A. No, ma'am.

7 Q. Were there times when you saw drums
8 dumped at Rosedale where the drums themselves
9 remained at Rosedale?

10 A. No, I don't think so.

11 MR. CROWE: Pat, are you asking if he
12 saw that or if it happened?

13 MS. CASANO: I'm asking if he saw it
14 happen. But that prompts me to ask did you ever
15 see drums that had been dumped at Rosedale where
16 you didn't actually see the dumping occur but you
17 saw the drums at Rosedale?

18 A. I don't know how to put this, see.
19 They had a man there that used to pick up all the
20 drums and salvage them and resell them. Now, I
21 have seen that.

- 1 Q. Who was that person?
- 2 A. Sam Grant.
- 3 Q. Would he take all of the drums that
- 4 were brought to Rosedale?
- 5 A. All that he could salvage and resell.
- 6 Q. Do you know whether drums were brought
- 7 to Rosedale that could not be salvaged and
- 8 therefore remained at Rosedale?
- 9 A. I don't know. I didn't see it.
- 10 Q. Did you ever see Sam Grant at Sauer's
- 11 Landfill?
- 12 A. No.
- 13 Q. Are you familiar with electrical
- 14 transformers?
- 15 A. Yes.
- 16 Q. Did you ever see any electrical
- 17 transformers at Sauer's Landfill?
- 18 A. No. You mean being dumped?
- 19 Q. Right.
- 20 A. No.
- 21 Q. Or that had been dumped?

1 A. No.

2 MS. CASANO: Let's take about a two-
3 minute break. I'm going to just caucus with Andy
4 here and see if he has anything that he wants me
5 to ask, and then I think I'm finished.

6 (Discussion off the record.)

7 Q. I may have asked you this, Mr. Smith,
8 but I don't recall. Did you ever see anyone
9 other than Chevrolet Ray and Mike Cefaloni bring
10 drums to Sauer's Landfill?

11 A. No.

12 Q. When you first started working at
13 Sauer's Landfill, were the sides of the trench
14 where you were working clean dirt or trash?

15 A. I would say clean dirt. I can't be
16 sure about that.

17 Q. You indicated in your earlier
18 testimony, Mr. Smith, that the trench was
19 approximately 100 feet long, 30 feet wide and 20
20 feet deep; is that correct?

21 A. Yes, ma'am.

1 Q. Could you tell me about how big this
2 room is? What would you say the dimensions
3 were?

4 A. I'd say 20 by 50.

5 Q. And approximately how high?

6 A. 10.

7 Q. When you were working at Sauer's
8 Landfill, were there times during the course of a
9 day when you needed to refuel the bulldozer?

10 A. No.

11 Q. Did you refuel the bulldozer?

12 A. Yes.

13 Q. And when would you do that?

14 A. At night when I quit.

15 Q. And you could operate on one tank over
16 a day?

17 A. Yes.

18 Q. Were there any times when the
19 bulldozer broke down when you were working at
20 Sauer's Landfill?

21 A. Not that I recall.

1 Q. And I'm fairly certain that I asked
2 you this, but just let me confirm this. I
3 believe you testified earlier that, generally
4 speaking, that Robb Tyler drivers used either
5 Sauer's dump or Rosedale, and that generally
6 speaking, they used whichever dump was closest;
7 is that correct?

8 MR. RYAN: Are you talking about
9 before Mr. Smith went to Sauer's dump?

10 MS. CASANO: Yes, before Rosedale
11 closed.

12 MR. RYAN: I think that misstates his
13 prior testimony. You have made it to be a random
14 thing, either Sauer's or Rosedale. He has
15 testified that his view was it was on very few
16 rare occasions that a Robb Tyler driver would use
17 Sauer's dump.

18 MR. MASUR: Well, I'm going to object
19 to that because I don't think that is a fair
20 characterization either, but I would suggest we
21 ask the witness.

1 MR. RYAN: Start a brand new
2 question.

3 Q. Before Rosedale Landfill closed, do
4 you know if Tyler drivers used Sauer's Landfill?

5 A. No, I don't.

6 Q. I know that was addressed in the
7 previous transcript, but I'm not going to be able
8 to put my finger on it right away.

9 (Discussion off the record.)

10 Q. I will turn your attention to page 29
11 of Exhibit 2, beginning with line 1 and reading
12 down through, I think, page 31, line 5, and also
13 on page 34 beginning at line 13.

14 MR. RYAN: Why don't you just do one
15 at a time. Do you want to reread that or do you
16 want to summarize it?

17 Q. As I read the testimony on pages 29
18 through 31, you testified earlier that at least
19 occasionally Tyler drivers would use Sauer's
20 Landfill before Rosedale closed; is that
21 correct? If you would read that, Mr. Smith?

1 MR. GILLAN: I'm going to object to
2 this point when you are using the word in
3 testifying earlier. He has testified over this
4 material today as well. So you are going to have
5 to distinguish between today's testimony, or are
6 you referring only to the deposition transcript
7 from May 21, 1991?

8 Q. In the testimony that is recorded on
9 page 29 through 31 of Exhibit 2, you testified
10 that before Rosedale Landfill closed, Tyler's
11 drivers would use Sauer's Landfill; is that
12 correct?

13 MR. RYAN: I think he's reading it
14 now.

15 MS. CASANO: Okay. I'm sorry.

16 A. Yes, that might have been a driver
17 dumped in there and that would have been Earl
18 Boswell.

19 Q. So as far as you recall today, at
20 least Earl Boswell used Sauer's dump at least
21 occasionally before Rosedale closed?

1 A. Yes.

2 MS. CASANO: Okay. I'm finished.

3 MR. RYAN: I'd like to keep going if
4 we could.

5 MS. CASANO: Sure.

6 Mr. Smith, I'm going to turn the
7 question over to Kathy Kinsey who is with the
8 Maryland Attorney General's office and is
9 representing State of Maryland.

10 EXAMINATION BY MS. KINSEY:

11 Q. Mr. Smith, Pat has done such a
12 wonderful, thorough job that I just have one
13 question for you.

14 Q. Was there ever a time prior to the
15 time that Rosedale closed permanently in the
16 spring of 1969 when the Rosedale Landfill was
17 closed for any period of time?

18 MR. RYAN: After '64 when he began
19 working there?

20 MS. KINSEY: Correct.

21 Q. After '64 when you began working

1 there?

2 A. Not that I recall, no.

3 MS. CASANO: Who is next?

4 MS. THOMSON: I'd like to go next, if
5 I may.

6 EXAMINATION BY MS. THOMSON:

7 Q. Mr. Smith, my name is Katie Thomson
8 and I represent AT&T. I just have a few
9 questions that I'd like to ask you.

10 Do you recall a company named Maryland
11 Cup?

12 A. Yes, I do.

13 Q. Do you recall whether Maryland Cup was
14 a Robb Tyler customer?

15 MR. BRAGER: Katie, just allow me to
16 object for the record and ask you to identify the
17 Maryland Cup facility on Reisterstown Road which
18 is the facility at issue in the case.

19 Q. Okay. Do you recall the Maryland Cup
20 facility on Reisterstown Road in Baltimore? I
21 believe it is the only Maryland Cup facility.

1 MR. BRAGER: There were other
2 facilities at the time?

3 MR. RYAN: Do you know where it was?

4 A. No, I don't know where it was.

5 Q. Do you know whether the Maryland Cup
6 company that you are aware of was a Robb Tyler
7 customer?

8 A. I don't know now if it was a regular
9 customer of Robb Tyler's.

10 Q. Did you ever see what you believe was
11 waste from Maryland Cup at the Rosedale
12 Landfill?

13 A. Yes.

14 Q. What lead to your belief that that
15 waste was from Maryland Cup Company?

16 A. You can see the names on different
17 pieces.

18 Q. When you say pieces, what do you
19 mean?

20 A. Pieces of paper in the trash.

21 Q. What types of waste do you recall

1 seeing from Maryland Cup?

2 A. It used to be containers that they
3 were packed in and so forth.

4 Q. Did you ever see any liquid waste?

5 A. No.

6 Q. Do you know who hauled that waste or
7 transported that waste to the Rosedale Landfill?

8 A. That might have been a driver by the
9 name of Willie Edmunds. I'm not sure about that.

10 Q. And was Mr. Edmunds a Robb Tyler
11 driver?

12 Q. Do you recall ever seeing waste from
13 Maryland Cup at the Sauer landfill during the
14 time that you were there?

15 A. Yes.

16 Q. Was the waste of the same nature?

17 A. The same thing.

18 Q. If I said Tyler landfill, I meant
19 during the time that you worked at Sauer's
20 Landfill.

21 A. Yes.

1 Q. Who was the driver of that waste, was
2 that also Mr. Edmunds?

3 A. Yes, it would have been.

4 Q. So most of the waste that you saw from
5 Maryland Cup were pieces of paper or containers?

6 A. Yes.

7 Q. Anything else that you saw?

8 A. No.

9 Q. Do you recall a company named Crown
10 Cork & Seal? They had several plants, I believe,
11 one of them was on Newkirk Avenue in Baltimore?

12 A. I recall the name, but I don't know
13 where the plant was at.

14 Q. Do you know whether Crown Cork & Seal
15 was a Robb Tyler customer at any point during the
16 time you worked for Robb Tyler?

17 A. No, I don't.

18 Q. Did you ever see any waste that you
19 believe came from Crown Cork at the Rosedale
20 Landfill?

21 A. Yes.

1 Q. What type of waste would that have
2 been?

3 A. Bottle caps.

4 Q. Anything else that may have come from
5 Crown Cork & Seal?

6 A. No.

7 Q. Did you see any waste or bottle caps
8 from Crown Cork & Seal during the time that you
9 were working at the Sauer landfill?

10 A. No, I didn't.

11 Q. Do you know where Newkirk Avenue is in
12 Baltimore?

13 A. No, I don't.

14 Q. I just want to clarify a point that
15 you made earlier in your testimony today. Is it
16 your testimony the fly ash you used as cover at
17 Sauer's, to the extent that you used fly ash,
18 came from Baltimore Gas & Electric?

19 A. Yes.

20 MS. THOMSON: That is all I have.

21 EXAMINATION BY MR. BRAGER:

1 Q. Mr. Smith, my name is Rob Brager, and
2 I represent Sweetheart Cup or Maryland Cup, and
3 I'd like to ask you just a few questions. When
4 you identified waste from Maryland Cup, you said
5 you saw their names on different pieces of
6 paper?

7 A. Yes.

8 Q. What kinds of paper?

9 A. Possibly on a bag or something where
10 the cups would be packed in.

11 Q. Do you know if that waste came from
12 the Maryland Cup plant or could that waste have
13 come from people who used Maryland cups, like
14 this cup here, for example?

15 A. No, it wasn't used cups. It was all
16 new stuff.

17 Q. It was a new cup?

18 A. Yes.

19 Q. So you saw new cups?

20 A. Yes.

21 Q. And these were dumped at Sauer's dump

1 and at Rosedale?

2 A. Yes, sir.

3 Q. Were they compacted?

4 A. Yes, a 40-yard compactor.

5 Q. And it was hauled by Willie Edmunds,
6 you believe?

7 A. I think he was the driver.

8 Q. How many loads do you think he took to
9 Sauer's dump in the time that you worked there?

10 A. I believe it was two loads a week that
11 they were pulling at that time.

12 Q. Would all of those loads have gone
13 into the trench that you were bulldozing?

14 A. Yes.

15 Q. You said earlier that you knew Michael
16 Cefaloni well?

17 A. Yes.

18 Q. Did you like Michael Cefaloni?

19 A. Oh, yes.

20 Q. Do you know whether he is a truthful
21 and honest person?

1 A. I would say, yes.

2 Q. If Mr. Cefaloni stated that he had
3 only dumped at Sauer's dump, would you say that
4 he was telling the truth?

5 A. Not at that, no.

6 Q. Did you ever see Michael Cefaloni dump
7 barrels of waste and ignite them while you were
8 at Sauer's dump?

9 A. No.

10 Q. How often did you see waste from
11 Maryland Cup taken to the Rosedale landfill?

12 A. At least one load a week.

13 Q. For how long, from 1964 when you first
14 started there, or did it start after 1964?

15 A. It started after 1964.

16 Q. Do you know about when that started?

17 A. No, I don't.

18 Q. And you are certain that the waste
19 that you saw from Maryland Cup was compactor
20 waste?

21 A. Yes.

1 Q. I have no further questions.

2 MR. RYAN: Does anyone else think they
3 have just five minutes or so.

4 MR. SCHALLER: Just two questions.

5 EXAMINATION BY MR. SCHALLER:

6 Q. Mr. Smith, my name is Charles
7 Schaller, and I represent the defendant, Edward
8 Azrael in this matter. I just have a couple of
9 quick questions for you regarding this.

10 Are you aware of a company named
11 Container Corporation of America?

12 A. The name sounds familiar, but I can't
13 be sure if I know it or not, Container
14 Corporation of America.

15 Q. Did you ever see any material at
16 Sauer's Landfill that may have come from
17 Container Corporation of America?

18 A. Not to my knowledge I didn't, no.

19 Q. Are you aware of a company named Armco
20 Steel?

21 A. Yes, I am.

1 Q. How are you familiar with them?

2 A. Well, they weren't too far from the
3 landfill.

4 Q. Do you recall seeing material from
5 Armco Steel at Sauer's Landfill, material meaning
6 any waste?

7 A. No, not really.

8 Q. Not really, meaning could you possibly
9 have seen it?

10 MR. LINGAN: Object. The witness has
11 already answered the question.

12 A. Can I say what?

13 MR. RYAN: Yes.

14 A. As I recall, Armco Steel had an awful
15 dust load, but I can't be certain if that was
16 dumped at Sauer's dump or not. I mean it was
17 terrible stuff. It was dusty, I mean.

18 Q. Did you ever see dust at Sauer's
19 Landfill of that nature?

20 A. Not that I recall, no.

21 Q. Do you know if Armco was a Robb Tyler

1 customer?

2 A. Robb Tyler picked up stuff at Armco
3 Steel. Now I don't know if he was a customer or
4 not.

5 Q. Did you ever see those waste materials
6 that you have previously described at Rosedale?

7 A. Yes.

8 MR. SCHALLER: I have nothing
9 further. Thank you.

10 MR. RYAN: Is there anybody that
11 thinks they have more than ten minutes?

12 MR. LAND: I think I do.

13 MR. MASUR: I do.

14 MR. RYAN: Why don't we break.

15 MS. CASANO: We will break and resume
16 at 1:30.

17 (Luncheon recess from 12:30 to
18 1:30p.m.)

19 EXAMINATION BY MR. LINGAN:

20 Q. Mr. Smith, my name is Tom Lingan and I
21 represent Armco Steel, and I'd like to ask a few

1 follow-up questions related to what you just
2 answered prior to the break.

3 You mentioned prior to the break that
4 there was a dust-like material that was generated
5 out of Armco?

6 A. Yes.

7 Q. Could you describe that for me,
8 please, as best as you are able to, what color it
9 was?

10 A. It was brown, just a brown dust, steel
11 dust, I suppose.

12 Q. You mentioned you characterized it as
13 horrible stuff prior to the break. By horrible,
14 you meant in what sense?

15 A. Dirty.

16 Q. Do you have any idea of what it was
17 composed of?

18 A. No.

19 Q. You mentioned that you saw some Armco
20 material deposited at the Rosedale Landfill?

21 A. Yes. Armco had a truck, a small truck

1 to haul some stuff in there.

2 Q. What type of material was hauled in
3 that truck, do you have any recollection?

4 A. It looked like scrap iron shavings and
5 wooden skids.

6 Q. Now, this dust that you referred to,
7 do you recall seeing that deposited at Rosedale?

8 A. Yes.

9 Q. Do you recall seeing that deposited at
10 Norris Farms?

11 A. Yes.

12 Q. As I understand your testimony today,
13 you don't recall seeing that material deposited
14 at Sauer's?

15 A. No, I don't.

16 MR. LINGAN: Thank you.

17 EXAMINATION MR. LAND:

18 Q. Mr. Smith, my name is Brian Land and I
19 represent General Motors. You testified earlier
20 today that you knew Chevrolet Ray from Robb
21 Tyler's 68th Street landfill; is that correct?

- 1 A. Yes.
- 2 Q. Is the Robb Tyler 68th Street landfill
3 the same as the Rosedale Landfill?
- 4 A. Yes, it is.
- 5 Q. Did you first meet Chevrolet Ray at
6 Robb Tyler's Rosedale Landfill?
- 7 A. Yes, I did.
- 8 Q. And would that have been sometime
9 before you started working at Sauer's dump?
- 10 A. Yes, it was.
- 11 Q. Do you recall how long before you
12 started working at Sauer's you met Chevrolet Ray
13 at Robb Tyler's Rosedale Landfill?
- 14 A. No. No, I don't.
- 15 Q. How often would you see Chevrolet Ray
16 at Robb Tyler's Rosedale Landfill?
- 17 A. Every day, five days a week.
- 18 Q. What would Chevrolet Ray be doing at
19 Robb Tyler's Rosedale Landfill when you saw him
20 every day?
- 21 A. Dumping stuff from General Motors.

1 Q. Was the material that he was dumping
2 from General Motors similar to the material you
3 saw him dump at Sauer's Landfill?

4 A. Yes, it was.

5 Q. Do you remember seeing Chevrolet Ray
6 at Robb Tyler's Rosedale Landfill right up until
7 the time you left to start working at Sauer's
8 Landfill?

9 A. Yes.

10 Q. Mr. Smith, you have been asked several
11 questions today regarding whether certain
12 companies' wastes were disposed of at Sauer's
13 dump when you worked there. In your position as
14 a bulldozer operator at Sauer's dump, were you
15 able to know where every single load of waste
16 came from?

17 A. No.

18 Q. Did you know where some loads of waste
19 came from because drivers who brought the waste
20 into Sauer's dump told you where they picked it
21 up?

1 A. Yes, and from the dump at 68th Street
2 too.

3 MR. KARABA: Could you read back that
4 answer, please.

5 (The record was read by the reporter.)

6 Q. What do you mean by the dump at 68th
7 Street, how was that able to allow you to
8 determine where loads of waste that came into
9 Sauer's came from?

10 A. Because it was the same stops that
11 they were picking up when they were dumping at
12 Rosedale, and they picked them up then and
13 brought them to Sauer's.

14 Q. So because you knew where a particular
15 driver was picking up waste when you were at
16 Rosedale, you knew where they were picking up
17 waste when you moved over to Sauer's dump?

18 A. Yes, sir.

19 Q. Could you also determine where loads
20 of waste came from by looking at the specific
21 content or ingredients in a pile of waste? For

1 instance, you testified earlier that you saw cups
2 in a pile of waste and were able to determine
3 that that waste came from the Maryland Cup
4 Company?

5 A. Yes. If it was out of the dinosaur
6 loads like compaction cans, because the whole
7 load came from one stop.

8 Q. So you had two ways of determining
9 where a load of waste came from. Either a driver
10 would tell you or you could look at the load of
11 waste and see something special in that load that
12 allowed you to determine where the load came
13 from?

14 A. Yes.

15 Q. So, is it fair to say that you knew
16 where some of the waste that came into Sauer's
17 came from but not all of it?

18 A. Yes.

19 Q. Now I want to ask you about some
20 specific companies. First is a company called
21 Anchor Post Products, Inc. Do you recall a

1 company named Anchor Post Products?

2 A. Yes, I do.

3 Q. What do you remember about Anchor Post
4 Products?

5 A. It was a wire load that came in.

6 Q. Was Anchor Post Products a Robb Tyler
7 stop?

8 A. Yes.

9 Q. Do you recall whether Anchor Post
10 Products' waste came into the Sauer landfill?

11 A. Yes, it did.

12 Q. And how did you know that waste came
13 from Anchor Post Products?

14 A. The same loads, the same stuff.

15 Q. It was the same stuff that Anchor Post
16 Products had disposed of at the Rosedale
17 Landfill?

18 A. Right, yes, sir.

19 Q. And were you able to look at that
20 waste and know that it was from Anchor Post, or
21 did one of the drivers tell you that he was

1 bringing it from Anchor Post?

2 A. No, you could look at it and tell it
3 was from Anchor Post.

4 Q. And what was it that you could see in
5 that pile of waste that allowed you to determine
6 it was from Anchor Post?

7 A. The same kinds of wire that they sent
8 in from that particular place.

9 Q. Do you recall who would bring in the
10 loads from Anchor Post into Sauer's dump?

11 A. No. It was different drivers that
12 would haul them.

13 Q. Do you ever recall Anchor Post's own
14 employees or Anchor Post's own truck coming into
15 Sauer's with a load of waste?

16 A. No.

17 Q. Do you recall how often waste from
18 Anchor Post was brought into Sauer's dump?

19 A. I believe it was once a week.

20 Q. Do you recall seeing loads from Anchor
21 Post come into Sauer's dump once a week for the

ORIGINAL
125

1 entire time that you worked at Sauer's?

2 A. Yes, sir.

3 Q. Now, I want to ask you about a
4 different company called O'Brien Paint Company.
5 Do you recall the O'Brien Paint Company?

6 A. Yes, I remember O'Brien Paint
7 Company.

8 Q. Do you ever recall seeing waste from
9 O'Brien Paint at the Rosedale Landfill?

10 A. Yes. Yes, I have seen it at
11 Rosedale.

12 Q. And how did you know that waste came
13 from the O'Brien Paint Company?

14 A. You could see the labels on the gallon
15 cans.

16 Q. What was the waste that came from the
17 O'Brien Paint Company made up of in addition to
18 the cans?

19 A. That was it, just cans.

20 Q. Do you recall who brought waste from
21 O'Brien Paint into the Rosedale Landfill?

1 A. I'm not sure.

2 Q. Was O'Brien Paint a Robb Tyler stop?

3 A. I believe so, yes.

4 Q. But you don't recall which Robb Tyler
5 driver or subcontractor brought waste in from
6 O'Brien Paint to the Rosedale Landfill?

7 A. It runs in my mind that it might have
8 been Earl Boswell.

9 Q. Do you recall seeing waste from
10 O'Brien Paint at the Rosedale Landfill right up
11 until the time you left the Rosedale Landfill to
12 work at Sauer's dump?

13 A. Not every day, no.

14 Q. Well, let me back up and ask you a
15 different question, then. How often would you
16 see waste from O'Brien Paint come into the
17 Rosedale Landfill?

18 A. I'd say twice a week.

19 Q. And was waste from the O'Brien Paint
20 Company coming into the Rosedale Landfill twice a
21 week right up until the time you left Rosedale to

1 work at Sauer's dump?

2 A. I'm not sure about that.

3 Q. Do you recall seeing waste from
4 O'Brien Paint at Sauer's dump?

5 A. No.

6 Q. Mr. Smith, do you know anything about
7 the waste from the oil terminal on Boston Street
8 that is now known as Exxon, but was formerly
9 known as either Standard Oil or Esso?

10 A. No, I don't know anything about that.

11 Q. Do you know anything about the waste
12 from a company known as Palm Oil Recovery or PORI
13 located in the Bethlehem Steel plant at Sparrows
14 Point?

15 A. Yes, I do remember that, Palm Oil.

16 Q. What do you recall about Palm Oil
17 Recovery?

18 A. It came into the Rosedale Landfill.
19 It also came into Norris' Farm.

20 Q. How did you know that waste from Palm
21 Oil Recovery came into the Rosedale Landfill?

1 A. The driver would tell you what it
2 was.

3 Q. Do you recall which driver that was?

4 A. No, I don't.

5 Q. Was it a Robb Tyler driver?

6 A. Yes, it was.

7 Q. Was Palm Oil Recovery a Robb Tyler
8 stop?

9 A. That, I don't know.

10 Q. How often would waste from Palm Oil
11 Recovery come into the Rosedale Landfill?

12 A. I would say twice a week.

13 Q. And was waste from Palm Oil Recovery
14 coming into the Rosedale Landfill twice a week
15 right up until the time you left the Rosedale
16 Landfill to begin work at Sauer's dump?

17 A. To the best of my knowledge, yes.

18 Q. You said you don't recall specifically
19 waste from Palm Oil Recovery coming into Sauer's
20 dump?

21 A. No.

1 Q. When you began working at Norris Farms
2 after you worked at Sauer's dump, do you recall
3 waste from Palm Oil Recovery coming into Norris
4 Farms?

5 A. Yes, I do.

6 Q. And how often would the waste from
7 Palm Oil Recovery come into the Norris Farms
8 Landfill?

9 A. About the same amount, about twice a
10 week.

11 MR. LAND: I think those are all the
12 questions I have at this time.

13 EXAMINATION BY MR. BYRD:

14 Q. Hi, Mr. Smith?

15 A. Hi.

16 Q. My name is Ron Byrd, and I represent
17 Baltimore Gas & Electric Company. I'd like to
18 also ask you a few questions.

19 I'd like to start by asking you a few
20 questions about Exhibit 1, the affidavit that you
21 have signed entitled Affidavit of Edgar Smith.

1 Do you have it there in front of you? That is it
2 in front of you, right?

3 A. Yes.

4 Q. Look on page five of the affidavit.
5 It indicates a date that the notary saw you sign
6 it of September 24, 1990. Does that sound about
7 right?

8 A. Yes.

9 Q. Using that as kind of a date, as a
10 yardstick, you mentioned earlier that you had
11 gone out to the site with Gwen Walsh; is that
12 right?

13 A. Yes.

14 Q. Would that have been before this
15 affidavit was signed or afterward?

16 A. I believe that was before it was
17 signed.

18 Q. It was before?

19 A. I think so.

20 Q. Do you recall about how many times you
21 went to the site before you signed this

1 affidavit?

2 A. Just one time.

3 Q. One time. And were you there with
4 anyone else besides Gwen Walsh?

5 A. No.

6 Q. Before you signed this affidavit, did
7 you meet with anybody else concerning Sauer's
8 dump?

9 A. Yes, I met with Bill Beck and Gwen
10 Walsh at the same time.

11 Q. Was that before September 24, 1990?

12 A. Yes, it was.

13 Q. I know this affidavit is typed, but
14 were these words actually written out by you or
15 did someone else actually write out these words
16 before it was typed?

17 A. Someone else had written them out.

18 Q. The information in this affidavit, who
19 was that provided by?

20 A. Me.

21 Q. By you?

1 A. Yes.

2 Q. Do you know if the information
3 contained in this affidavit was meant to be your
4 full body of knowledge concerning Sauer's dump?

5 A. Yes, as far as I know looking through
6 the affidavit, I don't see any mention of Mr.
7 Parker's name; isn't that right?

8 A. Yes.

9 Q. Was that because you did not recall at
10 that time any information about Mr. Parker and
11 Sauer's dump?

12 A. I don't remember being asked anything
13 about him. I don't know if I'm wrong about that
14 or not.

15 Q. You do not recall one way or the
16 other?

17 A. No.

18 Q. Let me ask you a couple of questions
19 about Mr. Parker. Can you tell me what Mr.
20 Parker looked like?

21 A. He was a man about your size, but he

1 was a colored man and about your height.

2 Q. Was he as young as I am? Do you
3 recall how old he was?

4 A. He was a fairly young man.

5 Q. You mentioned he drove a Mack truck or
6 he owned a Mack truck?

7 A. He owned Mack trucks, and as I recall,
8 I think he had Mack trucks and some Ford trucks,
9 and I believe some Internationals.

10 Q. Do you recall how many he owned?

11 A. No, I don't.

12 Q. Do you know were these all the same
13 type of trucks?

14 A. No. There were some tandem trucks and
15 some single axle.

16 Q. Did they all have the same body
17 color?

18 A. Yes.

19 Q. What color was that?

20 A. I believe that was red.

21 Q. Did he have any other colors on his

1 trucks if they were red, assuming the cab was
2 red, were there any other identifying colors?

3 A. No, no.

4 Q. Did he have anything written on the
5 side of his trucks?

6 A. I can't say for sure. He might have
7 had his name on the side, but I'm not sure about
8 that.

9 Q. What other waste haulers at that time
10 were using red trucks?

11 A. I thought Modern had some red trucks.
12 I'm not sure.

13 Q. Was Modern a fairly big company back
14 then?

15 A. Yes.

16 Q. How many trucks, roughly, did they
17 have in their fleet?

18 A. I wouldn't have any idea.

19 Q. Was it as big as Tyler's outfit?

20 A. No.

21 Q. Did Fritz Sauer have red trucks?

1 A. He had one barrel truck that was red.

2 Q. How about Bohager, did they have red
3 trucks?

4 A. Yes, Bohager had red trucks.

5 Q. Was Bohager a pretty big waste outfit
6 back then?

7 A. No, he wasn't.

8 Q. How many trucks did they have?

9 A. I really don't know.

10 Q. Was there a company called Reliable
11 back then?

12 A. I don't remember a company Reliable.
13 I remember a Reliable Landfill. I can't recall
14 where that was at.

15 Q. Now, when Rosedale closed down, I
16 think you mentioned earlier that the Quarantine
17 Landfill was open as well as Sauer's; is that
18 right?

19 A. Yes.

20 Q. Was there also a landfill called
21 Colgate that was open?

1 A. I don't believe so. I believe Colgate
2 was closed.

3 Q. During that time that Rosedale was
4 closed and Norris Farms open, did you ever have
5 occasion to be assigned to work at Quarantine?

6 A. No.

7 Q. You never spent a day over there?

8 A. Not after the farm opened, no.

9 Q. No, before the farm opened?

10 A. Oh, yes.

11 Q. Now, between the time Rosedale shut
12 down and Norris Farms opened, during that period
13 of time?

14 A. No.

15 Q. You did not work at Quarantine?

16 A. No, I didn't.

17 Q. You indicated that on occasion you saw
18 Parker's trucks come into Sauer's during that
19 period of time, right?

20 A. Yes. Yes.

21 Q. Can you quantify how many times you

1 are talking about? Was it a handful or do you
2 have any idea?

3 A. Maybe a half a dozen.

4 Q. And you indicated that someone told
5 you that the fly ash came from BG&E?

6 A. Yes.

7 Q. And who told you that?

8 A. I believe Parker's driver said that.

9 Q. Did you know any of Parker's drivers
10 by name?

11 A. I know one whose name was Leon, and
12 that is the only one I know by name. I know them
13 by sight.

14 Q. Do you have any personal knowledge
15 yourself that the fly ash came from BG&E?

16 A. No.

17 Q. You never saw the fly ash coming out
18 of the BG&E plants; is that right?

19 A. No, I didn't.

20 Q. When you worked at Rosedale, did you
21 ever see other ash coming into the site?

1 A. Yes. Well, the City hauled from the
2 incinerator in there at Rosedale, and Parker used
3 to haul a lot of cinders over there to build road
4 with.

5 Q. Did Parker haul city ash?

6 A. No.

7 Q. What did you mean when you said Parker
8 used to haul?

9 A. He hauled cinders in there from Gas &
10 Electric and we used that for road material.

11 Q. Who hauled from the City incinerator?

12 A. The City's own truck.

13 Q. How often would they come into
14 Rosedale?

15 A. They ran three shifts in there from
16 the incinerator where they burnt their trash.
17 The ashes were disposed at Rosedale.

18 Q. How often? How many times a day or a
19 week would the City trucks come in there?

20 A. Well, they ran every day.

21 Q. How often every day?

1 A. At least every hour. Now that was one
2 truck.

3 Q. One truck would come in every hour?

4 A. Yes.

5 Q. And how many hours a day would
6 Rosedale be open?

7 A. Well, they hauled in there three
8 eight-hour shifts around the clock.

9 Q. So 24 trucks came in there a day?

10 A. Yes, or maybe more than that.

11 Q. Are we talking about dump truck here?

12 A. They were the same size as a front-end
13 loader trash truck. I don't know if you know how
14 big that is or not.

15 Q. Do you know how many cubic yards you
16 are talking about, carrying capacity?

17 A. I think they could put 40 yards of
18 trash in it.

19 Q. Do you know where those trucks went
20 after Rosedale was closed?

21 A. No, I don't. I presume they went into

1 city landfills.

2 Q. Let me ask you about a few other
3 parties. Are you familiar with a company called
4 Lord Baltimore Press?

5 A. Yes, I am.

6 Q. Do you know where they were located?

7 A. No, I don't.

8 Q. Do you know if they were a Robb Tyler
9 customer?

10 A. Yes, they were.

11 Q. Did you ever see Lord Baltimore
12 Press's waste come into Rosedale?

13 A. Yes.

14 Q. How do you know it was Lord Baltimore
15 Press's waste?

16 A. Again, you could see the
17 advertisements on the papers that they brought
18 in.

19 Q. What kind of waste are we talking
20 about?

21 A. We are talking about the kind of

1 advertisement you see in a cigar box or a big
2 sheet of paper this square with different designs
3 on it.

4 Q. Did you ever see any liquids or inks?

5 A. No, I didn't.

6 Q. How often, if you know, how often was
7 Lord Baltimore Press's waste brought into
8 Rosedale?

9 A. I think it was every day. I'm not
10 sure.

11 Q. Were those wastes then taken to
12 Sauer's during the time Rosedale closed down?

13 A. Yes, it was.

14 Q. Are you familiar with a company called
15 Glidden Paint or Glidden Durkey?

16 A. Glidden Paint.

17 Q. Do you know if they were a Robb Tyler
18 customer?

19 A. I would say yes.

20 Q. This was back in the 1960s we are
21 talking about?

- 1 A. Yes.
- 2 Q. Are you familiar with what type of
3 waste Glidden paints had?
- 4 A. Mostly your average trash, wooden
5 pallets and buckets.
- 6 Q. I presume those were paint buckets?
- 7 A. Yes.
- 8 Q. Would they have any residual paint in
9 it left over? Would you ever see paint?
- 10 A. I really never noticed it.
- 11 Q. Did Glidden Paint's waste go to
12 Sauer's when Rosedale closed?
- 13 A. No, it didn't.
- 14 Q. Where did it go?
- 15 A. It went to Quarantine.
- 16 Q. Are you familiar with a company called
17 SCM or SCM Chemical?
- 18 A. No, I'm not.
- 19 Q. Are you familiar with a company called
20 PEMCO on Eastern Avenue?
- 21 A. I have heard of the company, yes.

1 Q. Are you familiar with the nature of
2 their waste?

3 A. No, I'm not.

4 Q. Are you familiar with a company called
5 Mobay?

6 A. No.

7 Q. Are you familiar with the Canton
8 Railroad?

9 A. The Canton Railroad, yes.

10 Q. Are you familiar with their waste?

11 A. No.

12 Q. Do you know if they were a Robb Tyler
13 customer?

14 A. No, I don't.

15 Q. You mentioned earlier you were
16 familiar with a company called American
17 Cooperage; is that right?

18 A. I know the name American Cooperage.

19 Q. Did you indicate earlier that Cefaloni
20 hauled for American Cooperage?

21 A. I don't believe so. I know American

1 Cooperage, but I don't know who hauled that.

2 Q. You don't know if they were a Robb
3 Tyler customer?

4 A. No, I don't.

5 Q. Do you have any knowledge that
6 American Cooperage drums were ever taken to
7 Rosedale?

8 A. No, I don't.

9 Q. Do you have any knowledge that
10 American Cooperage drums were ever taken to
11 Sauer's dump?

12 A. No, I don't.

13 Q. You mentioned a fellow by the name of
14 Sam Grant earlier; is that right?

15 A. Yes.

16 Q. Did he have a nickname?

17 A. Not that I know of.

18 Q. Was he ever referred to as "the
19 preacher"?

20 A. Well, yes.

21 Q. Did you ever see Sam Grant or "the

1 preacher" at Sauer's dump?

2 A. No.

3 Q. Did you ever have any discussions with
4 Sam Grant about where he took drums?

5 A. No, I didn't.

6 MR. BYRD: I don't have anything
7 further. Thank you.

8 EXAMINATION MR. MASUR:

9 Q. Mr. Smith, my name is Dan Masur. I
10 represent the City of Baltimore in connection
11 with this proceeding. Do you have any knowledge
12 with respect to the disposal of waste generated
13 by the City of Baltimore at Sauer's dump?

14 A. I don't have no knowledge of that.

15 Q. Do you have any knowledge of the
16 disposal of any waste materials by city employees
17 at Sauer's dump?

18 A. No.

19 Q. Mr. Byrd was asking you about the
20 affidavit which I think is Exhibit 1. Let me
21 just follow up a little bit with that. I take it

1 this was prepared by someone after they talked
2 with you?

3 A. Yes.

4 Q. And based on what you had shared with
5 them?

6 A. Yes.

7 Q. Do you know by whom it was prepared?

8 MR. RYAN: Do you know who sent it to
9 you?

10 A. Gwen Walsh and --

11 Q. Mr. Beck?

12 A. Mr. Beck, yes.

13 Q. Who is Gwen Walsh? I know who Mr.
14 Beck is, but I don't know Gwen Walsh.

15 A. She was, at that time, an attorney for
16 BFI.

17 Q. Actually employed by BFI as opposed to
18 an outside law firm?

19 A. Yes.

20 Q. How long after your conversation with
21 Mr. Beck and Ms. Walsh did you receive this

1 affidavit?

2 A. However long it took them to type it
3 up and send it to me.

4 Q. A few days later?

5 A. Yes, maybe two weeks.

6 Q. Did you have the opportunity to make
7 any changes in it if you wanted to?

8 A. Yes.

9 Q. Did you make any changes in it?

10 A. No.

11 Q. You felt it fairly stated what you had
12 told them?

13 A. Yes, sir.

14 Q. How long had your conversation with
15 them been prior to that?

16 MR. RYAN: You mean the time when they
17 talked about the information?

18 MR. MASUR: Right. Do you recall how
19 long that had been?

20 MR. RYAN: How long you met with them?

21 A. Well, it was about two or three hours,

1 I guess.

2 Q. On just one occasion?

3 A. Yes.

4 Q. Was that in a meeting or by
5 telephone?

6 A. No. They came out to my house.

7 Q. And did the affidavit reflect
8 everything you told them during that two or three
9 hours or just some of the things?

10 A. Everything that I told them.

11 Q. Do you know what the purpose was for
12 taking the information you gave them and putting
13 it in this form?

14 MR. RYAN: If you know.

15 A. I don't know, no.

16 Q. Do you have any understanding as to
17 what the nature of the issues presented by this
18 case are?

19 A. I'm not sure I understand that.

20 Q. Do you know what this litigation that
21 brings us here today is all about?

1 A. Yes.

2 Q. Do you know what claims are being made
3 and by whom?

4 A. Yes.

5 Q. Do you know what the significance is
6 of whether dumping occurred on one side of the
7 road or the other side of the road?

8 A. Yes.

9 Q. What is your understanding of the
10 significance of that?

11 A. You mean like where I dumped trash at
12 and where Sauer's dumped at?

13 Q. Right. What is the significance of
14 whether you dumped trash on the north side of the
15 road or the south side of the road?

16 A. Well, the south side of the road was
17 where I was dumping at.

18 Q. My question is, do you know why it is
19 important which side of the road you were on for
20 purposes of this case?

21 A. To see about the hazardous waste that

1 was dumped in there.

2 Q. Why would it make any difference for
3 this case whether it was on the north side of the
4 road or the south side of the road?

5 MR. RYAN: Object, because that is
6 asking him for a legal conclusion.

7 MR. MASUR: I just want to know what
8 his understanding is, if any.

9 A. I don't know if I'm right, but to see
10 who is responsible for dumping the hazardous
11 waste in there. Is that right?

12 Q. I can't answer, but all I want to know
13 is what your understanding was. Is it your
14 understanding --

15 A. To see if Robb Tyler was responsible
16 for the hazardous waste or somebody else.

17 Q. And is it your understanding that if
18 Robb Tyler's waste was dumped on the north side
19 of the road, they would not be responsible; but
20 if it was on the south side of the road, they
21 would be?

1 A. Yes.

2 Q. And that was your understanding at the
3 time the affidavit was done?

4 A. Yes.

5 Q. Let's talk about Exhibit 2 for a
6 moment, if you would. That is the deposition
7 transcript?

8 MR. LAND: I'm going to object to that
9 characterization of it?

10 MR. MASUR: That is what it says at
11 the front of the transcript.

12 MR. LAND: Just call it Exhibit 2.

13 MR. MASUR: I will call it what I
14 wish.

15 Q. At the time, how did you come to be at
16 the room where this was taken?

17 MR. RYAN: I drove him there.

18 Q. Did somebody call you up and say we
19 would like to do this?

20 A. Yes.

21 MR. RYAN: You don't need to get into

1 any of our conversations.

2 Q. You are represented by Mr. Ryan, I
3 understand that.

4 A. Yes.

5 Q. I'm not trying to get into
6 conversations you had with Mr. Ryan. My earlier
7 questions, I was also trying to avoid getting
8 into conversations you had with Mr. Beck or Ms.
9 Walsh. But obviously, you came to be here on
10 this particular day; is that correct?

11 A. Yes.

12 Q. And you understood that the purpose
13 for your being there was to provide a sworn
14 statement with respect to the events that had
15 occurred at Sauer's dump; is that correct?

16 A. Yes.

17 Q. And on page 2, the names of four
18 individuals appear: Mr. Byrd, Mr. Ryan, Mr.
19 Grummer and Mr. Gutter. To the best of your
20 knowledge, is this an accurate statement of the
21 individuals who were there that day?

1 A. Yes.

2 Q. I understand there was a court
3 reporter as well?

4 A. Yes.

5 Q. Was anyone else there?

6 A. I don't remember.

7 Q. Following the deposition, I take it
8 you received a copy of the transcript?

9 A. Yes.

10 Q. And you had an opportunity to read
11 it?

12 A. Yes.

13 Q. And was it mailed to your home, or did
14 you go to somebody's office to read it?

15 A. No, it was mailed to my home.

16 Q. And on page 166 your signature
17 appears. Is that your signature?

18 A. Yes.

19 Q. Were you asked to sign it?

20 A. Yes, I was asked to sign it.

21 Q. And were you asked to complete the

1 errata sheet which is the last page?

2 MR. RYAN: The correction page?

3 A. Yes.

4 Q. And were you asked to sign that as
5 well?

6 A. Yes.

7 Q. Did you have any understanding as to
8 what the purpose was of the questioning that
9 occurred that day?

10 MR. RYAN: You already asked him that
11 to get information about the signing.

12 Q. I don't recall asking before, but I
13 want to know what your understanding is.

14 A. Yes.

15 Q. What was your answer, to get
16 information about the signing?

17 A. Yes.

18 Q. Did you have any understanding at that
19 time as to whether there were any other companies
20 involved in this proceeding?

21 A. Yes.

1 Q. You did have an understanding that
2 there were others?

3 A. Yes.

4 Q. Did you have any understanding as to
5 why the other companies weren't present that
6 day?

7 A. No.

8 Q. Were you asked to keep what you had
9 said that day confidential?

10 MR. RYAN: To the extent he's asking
11 for conversations he and I had, I will object.
12 Are you talking about something on the record,
13 something from another attorney?

14 MR. MASUR: Well, excluding
15 conversations with Mr. Ryan, were you asked to
16 keep what was said that day confidential?

17 A. I don't think so, I don't remember.

18 Q. When did you retire from
19 Browning-Ferris?

20 A. '86 or '87.

21 Q. Do you receive a pension from

1 Browning-Ferris?

2 A. Yes.

3 Q. In your statement at one point in the
4 pages which Ms. Casano directed you to, you said,
5 I believe, that the trucks that came to the
6 landfill would come three times a day. Do you
7 recall that?

8 MR. RYAN: Sauer's Landfill?

9 MR. MASUR: Well, let me check on that
10 language.

11 Well, let me just ask, how often would
12 those checks that were using the Sauer landfill,
13 on average, how often would they come to the
14 landfill each day?

15 A. Three times a day on average.

16 Q. Could it have been more often on
17 occasion?

18 A. Yes, it could.

19 Q. And people who have spoken about
20 having done as many as eight loads in a day, you
21 wouldn't disagree with that?

1 A. No, I wouldn't.

2 Q. The trench that you talked about, did
3 that run parallel to the railroad tracks, or did
4 it run perpendicular to the railroad tracks, or
5 some other configuration?

6 A. No, it ran parallel to the railroad
7 tracks.

8 Q. Does that mean had it been there at
9 the time, it would have run parallel with Bayview
10 Avenue as well?

11 A. Yes.

12 Q. At one point today you said that the
13 landfill was bordered by trees partially.

14 A. Yes.

15 Q. By that, did you mean to suggest that
16 the waste material on the landfill went all the
17 way up to the trees?

18 A. Yes, at one time it did.

19 Q. I'm not sure what you mean. What do
20 you mean at one time?

21 A. You see, the land they were filling

1 went all the way up to the trees and they filled
2 it all the way up to there and then came back the
3 other way.

4 Q. And would they fill among the trees?

5 A. No.

6 Q. You couldn't operate a bulldozer among
7 the trees?

8 A. No.

9 Q. So while they would go up to the
10 trees, they would not continue to fill into the
11 trees?

12 A. That is right.

13 Q. Sam Grant, the individual that I think
14 was also known as "the preacher," was he a Robb
15 Tyler employee?

16 A. No.

17 Q. What was his relationship with Robb
18 Tyler?

19 A. Robb Tyler allowed him to pick up
20 cardboard and copper and salvage drums that he
21 could sell and Robb Tyler got a percentage out of

1 that.

2 Q. Robb Tyler got a percentage on
3 whatever salvaging "the preacher" did?

4 A. Yes.

5 Q. For how long a period of time did this
6 relationship between Robb Tyler and "the
7 preacher" continue?

8 A. As long as the dump was open there at
9 Rosedale.

10 Q. After the Rosedale dump closed, did
11 the relationship end or did it continue at Norris
12 Farms?

13 A. No, I think from there, Sam Grant
14 worked at Quarantine for a while.

15 Q. Another Robb Tyler landfill?

16 A. Yes.

17 Q. Do you know how long he worked there?

18 A. No, I don't.

19 Q. Did you have any contact with Sam
20 Grant after the Rosedale Landfill closed?

21 A. No.

1 Q. Do you know whether or not he engaged
2 in his own independent waste-hauling activities
3 at some point in time after that?

4 A. I don't know.

5 MR. MASUR: I have nothing further.
6 Thank you very much.

7 MR. GILLAN: I have one question.

8 EXAMINATION MR. GILLAN:

9 Q. My name is John Gillan and I represent
10 Beatrice.

11 Talking about Sam Grant again, and I
12 don't really know how to put this other than
13 straight out, was Mr. Grant a black man, colored
14 individual?

15 A. Yes, he was.

16 MR. GILLAN: That is all I have.

17 EXAMINATION BY MR. JOSEPH:

18 Q. Mr. Smith, my name is David Joseph and
19 I represent Crown Cork & Seal and H. M.
20 Holdings. I want to ask you a couple of
21 questions about Luke Sauer. I'm going to make a

1 couple of statements here about what I understand
2 to have been your testimony today, and you can
3 correct me if I'm wrong. It is my understanding
4 that you started work in or around 1965 at
5 Rosedale.

6 A. '64.

7 Q. Did you know Luke Sauer prior to
8 1964?

9 A. No, I didn't.

10 Q. When did you first meet Luke Sauer?

11 A. When I went to work for Robb Tyler.

12 Q. How did it come about that you got to
13 know Luke Sauer?

14 A. I guess he come over on the landfill
15 and I was introduced to him then.

16 Q. Do you know what he was doing at the
17 landfill, and I take it that we are talking about
18 Rosedale at this point?

19 A. I don't know. He could have brought a
20 load of trash over at the dump or something.

21 Q. Did Luke ever dump trash at Rosedale

1 prior to Rosedale's closing in '69?

2 A. You mean after it closed?

3 Q. No, before, during the period '64 to
4 '69?

5 A. Oh, yes; yes, he did.

6 Q. Do you remember the type of truck that
7 he would drive when he came over to Rosedale?

8 A. It could have been a Dinosaur or it
9 could have been an open truck.

10 Q. Do you remember what color it was?

11 A. It was an old truck, I think.

12 Q. Do you know who the truck belonged
13 to?

14 A. Fritz Sauer's.

15 Q. Do you know if there was any agreement
16 between Robb Tyler and Fritz Sauer for Luke Sauer
17 to make deliveries or pick-ups for Robb Tyler?

18 A. No, I don't.

19 Q. You have no knowledge of that?

20 A. No.

21 Q. If you can remember, what year do you

1 remember Luke Sauer beginning to come to Rosedale
2 and delivering trash?

3 A. I don't know. I started there in '64
4 and I presumed he was dumping trash in there
5 before that.

6 Q. So the whole period that you were
7 working there he was making deliveries?

8 A. Yes.

9 Q. What was the frequency of his visits
10 to Rosedale?

11 A. Maybe once a day.

12 Q. Maybe once a day, for the whole five
13 years?

14 A. Yes.

15 Q. Do you remember the types of waste
16 that he would bring to Rosedale?

17 A. Once in a while he would have a load
18 of Sheetrock, and then he would bring a load of
19 Western Electric in on an open truck.

20 Q. And the Sheetrock was in an open truck
21 as well?

1 A. It was in a Dinosaur.

2 Q. Do you ever remember him bringing any
3 white powdery materials into Rosedale?

4 A. No.

5 Q. Would you normally be the bulldozer
6 operator that he would dump?

7 A. Yes, I would be on the dump.

8 Q. And it is my understanding that when
9 you were at Sauer's dump for the window, as we
10 call it, this window period, that Luke did not
11 dump where you were bulldozing?

12 A. That is right.

13 MR. JOSEPH: I have no other
14 questions.

15 EXAMINATION BY MR. CROWE:

16 Q. Mr. Smith, my name is Tom Crowe and I
17 represent a company called PORI International,
18 Inc. And when General Motors lawyer started
19 asking you questions, he asked if you knew a
20 company by the name of Palm Oil or PORI,
21 P-O-R-I. I'd like to break those apart for a

1 second. Did you know a company by the name of
2 Palm Oil?

3 A. I knew the container of trash that
4 came in.

5 Q. So you knew that a container of trash
6 came in from a company called Palm Oil?

7 A. Palm Oil, yes.

8 Q. And did you also know a company called
9 PORI?

10 A. No, I didn't.

11 Q. So the only name that you have known
12 is Palm Oil?

13 A. Palm Oil.

14 Q. So why don't we talk about Palm Oil
15 for a few minutes then. Can you describe the
16 type of trash which was received from Palm Oil or
17 which you believe was received from Palm Oil?

18 A. Yes.

19 Q. What was it?

20 A. It was like a grease. That is the
21 only way I know to describe it.

1 Q. And what color was it?

2 A. Black.

3 Q. And did you ever receive any liquids
4 that you believed had come from Palm Oil?

5 A. Not to my knowledge.

6 Q. Did you ever, at any landfill, receive
7 any barrels which you believed had come from Palm
8 Oil?

9 A. No.

10 Q. Now, I believe you indicated that you
11 thought that you had received some refuse from
12 Palm Oil while you were working at Rosedale. Are
13 you positive about that?

14 A. Yes, quite sure about that.

15 Q. And why is it that you think that that
16 came in while you were at Rosedale?

17 A. It was the same greasy stuff that was
18 dumped at Norris' Farm.

19 Q. Well, you remember it from Norris'
20 Farm?

21 A. Yes. And I remember it at Rosedale

1 too.

2 Q. And your testimony was that that was
3 brought in on a Robb Tyler truck to Rosedale?

4 A. Yes.

5 Q. And it was a Robb Tyler driver?

6 A. I think it was an owner/operator. I'm
7 not sure now about that.

8 Q. One of those people we've referred to
9 as subcontractors?

10 A. Yes.

11 Q. Do you recall who that was?

12 A. It seems to me like that Larry Jendras
13 might have hauled that, but I can't be sure about
14 that.

15 Q. What type of truck did it come in on?

16 A. We call them a Dumpster.

17 Q. And would you describe for me what a
18 Dumpster is?

19 A. Well, it is a single-axle truck but it
20 just has a small box that sits on the ground and
21 then he picks it up and sets it on the back of

1 his truck.

2 Q. So you would actually bring the box
3 in, dump it, and then take the empty box away?

4 A. Yes.

5 Q. Can you describe the box which came
6 into Rosedale with the material you thought came
7 from Palm Oil?

8 A. It was just sort of like a box
9 container. It had two doors on the top.

10 Q. Do you recall what color it was?

11 A. It was supposed to be green, but it
12 had about turned black.

13 Q. Was this material which you believe
14 came from Palm Oil, was that being received when
15 you first went to work at Rosedale in 1964, or
16 did it come in sometime after you had started
17 work?

18 A. I'm not sure about that. I believe it
19 was coming in in '64.

20 Q. Now, you have testified, I believe,
21 that you worked 6 days a week when you were

1 working at Rosedale?

2 MR. RYAN: I don't think he was asked
3 about Rosedale. He talked about Sauer's.

4 Q. How many days a week did you work when
5 you were working at Rosedale?

6 A. I worked six days one week and five
7 the next.

8 Q. And the week when you worked six days,
9 were you working on a Saturday?

10 A. Yes.

11 Q. And during the period of time when you
12 were operating the bulldozer at Rosedale, was
13 that dump open every Saturday?

14 A. Yes, it was.

15 Q. Now, when you say that the same
16 material, the same grease came in when you were
17 working at Norris Farms?

18 A. Yes.

19 Q. And again, was that always brought in
20 on a Robb Tyler truck?

21 A. Yes, it was.

1 Q. And was it always brought in by a Robb
2 Tyler driver?

3 A. Yes.

4 Q. Michael Cefaloni did not drive a Robb
5 Tyler truck, did he?

6 A. No, he didn't.

7 Q. Can you tell me whether at any time
8 you have ever seen Michael Cefaloni come in
9 driving the type of grease which you have
10 described, which you have attributed to Palm
11 Oil?

12 A. I don't remember.

13 Q. And was Norris Farms also open six
14 days a week?

15 A. Yes, it was.

16 Q. And it was from the date it opened
17 until the time you retired?

18 A. Yes.

19 Q. I have one more question. Let's take
20 the period beginning a year before Rosedale
21 closed down and let's extend it to about a year

1 after Norris Farms was opened. What type of
2 truck was Michael Cefaloni driving during that
3 period?

4 A. I think it was a blue Chevrolet
5 truck.

6 Q. Did it have anything written on it?

7 A. No.

8 MR. CROWE: Thank you.

9 EXAMINATION BY MR. KARABA:

10 Q. Mr. Smith, my name is Tom Karaba. I
11 represent the O'Brien Corporation. You have
12 testified that you recall seeing O'Brien Paint
13 cans being disposed of at the Rosedale dump; is
14 that correct?

15 A. Yes.

16 Q. Did those cans have lids on them?

17 A. I don't think so.

18 Q. Could you see whether or not the cans
19 were empty?

20 A. Yes, the cans were empty.

21 Q. Were the cans clean?

1 A. No. They had had paint in them.

2 Q. What color paints did you see?

3 A. Like a brown and a red and there might
4 have been some white.

5 Q. Did you see any other cans other than
6 the ones you have just described?

7 A. No.

8 Q. Can you describe the labels that you
9 saw?

10 A. The labels I saw was O'Brien Paint and
11 that was it.

12 Q. What was the exact name on those
13 labels?

14 A. Just O'Brien Paint.

15 Q. Was it latex paint?

16 A. I don't know. I didn't pay that much
17 attention to it.

18 Q. In what kind of container were these
19 cans delivered?

20 A. In a Dumpster.

21 Q. In a Dumpster?

1 A. Yes.

2 Q. What size Dumpster?

3 A. I would say a six-yard.

4 Q. Did you ever see any drums or barrels
5 disposed of at the Rosedale dump that had come
6 from O'Brien or that you thought had come from
7 O'Brien Paint?

8 A. No.

9 Q. Was there anything else in the waste
10 that you thought came from O'Brien other than
11 cans?

12 A. That is it.

13 Q. This morning you have testified that
14 the incinerator at the Rosedale dump was broken
15 during the time that you were working there; is
16 that correct?

17 A. Not broken. It just wasn't in use
18 anymore.

19 Q. So from 1964 to the time that the
20 Rosedale dump closed, the incinerator was never
21 used?

1 A. Yes.

2 Q. Do you know whether or not Robb Tyler
3 operated an incinerator at another location?

4 A. No.

5 MR. KARABA: I have no further
6 questions. Thank you.

7 EXAMINATION BY MR. BLEICHER:

8 Q. Mr. Smith, my name is Sam BLEICHER. I
9 represent Allied Signal. I appreciate your
10 patience. It has been a long day. I have some
11 ground I'd like to cover, though.

12 Let me start at the beginning. I'd
13 like to know a little bit about your education.
14 How many years of schooling did you have?

15 A. About six.

16 Q. You are a native of Baltimore, grew up
17 here?

18 A. No, West Virginia.

19 Q. When did you come here?

20 A. Back in the '30s, I think it was.

21 Q. What year were you born?

1 A. '28.

2 Q. When you went to work for Robb Tyler
3 at Rosedale, were you already a bulldozer
4 operator at that time, you already had experience
5 operating a bulldozer?

6 A. No.

7 Q. Did someone there teach you how to
8 operate a bulldozer?

9 A. Yes, they did.

10 Q. And did they teach you how to build a
11 landfill?

12 A. Yes.

13 Q. You have talked at some length about
14 the trench at the Sauer. Landfill I guess I want
15 to get a sense of how you operated at the
16 Rosedale Landfill. Was it a similar kind of
17 operation? Did you have a trench or a depression
18 that was filled step by step, or was it a
19 different kind of a filling operation?

20 A. No, it was a different kind of filling
21 operation.

1 Q. How did it work?

2 A. We would push off and then push down.
3 You call it ramping the trash down. You could
4 push off of a ledge and then push it down like
5 that, up and down.

6 Q. You work from the top then?

7 A. Yes. Then sometimes you would work
8 from the bottom up.

9 Q. So it was a different kind of an
10 operation. How many bulldozer operators were
11 there at Rosedale?

12 A. Just me and George Gephardt, two.

13 Q. And did Luke Sauer sometimes come to
14 work there on the bulldozer?

15 A. No. Well, now, I will rephrase that.
16 He did one time, we had one burned up and one
17 broke down and Luke brought his dozer over and
18 pushed for about three hours one day for us.

19 Q. He brought his own bulldozer, he
20 didn't use one of yours?

21 A. Yes.

1 Q. You mentioned that you worked six days
2 one week and five days the next?

3 A. Yes.

4 Q. What happened on the day when you
5 weren't there?

6 A. George Gephardt did it the day I
7 wasn't there.

8 Q. So on the Saturday you were on, you
9 were by yourself, that was his day off?

10 A. Yes.

11 Q. And the Saturday he was on, that was
12 your day off?

13 A. Right.

14 Q. Was George the one who taught you how
15 to operate a bulldozer?

16 A. Yes, he was.

17 Q. And he was your supervisor while you
18 were there?

19 A. Yes.

20 Q. Now, when you went to the Sauer
21 landfill; how many days a week were you working

1 there?

2 A. I was working six days there.

3 Q. Every week?

4 A. Every week.

5 Q. So this was a change in your
6 schedule?

7 A. Yes.

8 Q. And no one filled in for you?

9 A. No.

10 Q. And when you were there, did you have
11 a supervisor who was there at the time every
12 day? When you were at Rosedale, you said George
13 Gephardt was always there?

14 A. Yes. The only boss I had over there
15 at Sauer's Landfill was Fritz.

16 Q. Was he there all the time?

17 A. Yes, he was there most all the time.

18 Q. Did you talk to him often about what
19 you were doing or how things were going or where
20 waste was being disposed of?

21 A. No. I had my place to dump trash and

1 that is where I dumped it every day.

2 Q. So he was your only supervisor?

3 A. Yes.

4 Q. And he was there most of the time?

5 A. Yes.

6 Q. Now I hate to come back to this to
7 talk more about this trench. You are probably
8 tired of it, but the trench is really a
9 three-sided affair, isn't it? How did you get
10 the bulldozer in and out of the trench?

11 A. It is like you have got a trench right
12 through here and your dump truck is here, and
13 push down in it and up the other side and back
14 out.

15 Q. So it is sort of concave. It goes up
16 on both sides. You could go out on either side?

17 A. Yes.

18 Q. And drivers would dump on either end?

19 A. No, they just dumped on the one end.

20 Q. Why didn't they dump on the other
21 end?

1 A. I just didn't let them dump on the
2 other end. They would have if I would have let
3 them.

4 Q. You were the person who was relly in
5 charge of how this was done?

6 A. Yes.

7 Q. And it wasn't really the driver's
8 responsibility to figure out how the waste was
9 handled once it got out of their trucks?

10 A. That is right.

11 Q. But Robb Tyler and Fritz Sauer
12 expected you to be sure that that was done
13 right?

14 A. That is right, yes.

15 Q. Were you always sure that that one
16 trench was going to be big enough to handle all
17 the waste that was going to come to the Sauer
18 landfill? Did you ever worry about whether you
19 were going to run out of space?

20 A. Well, if I would have run out of
21 space, I had more space below it that I could

1 use.

2 Q. So you knew where you would go next?

3 A. Yes.

4 Q. Was there any effort on Robb Tyler's
5 part to bring as little as possible to this
6 landfill as opposed to taking things to
7 Quarantine?

8 A. I would say it was, yes.

9 Q. Some of the waste that had gone to
10 Rosedale, you have said elsewhere did go to
11 Quarantine, I think you said?

12 A. Yes.

13 Q. Do you have any idea why they wanted
14 to limit how much they brought there?

15 A. No, I don't.

16 Q. But it's your impression that that was
17 an understanding between Fritz Sauer and Robb
18 Tyler that they were not to try to bring
19 anything?

20 A. Yes, right.

21 (Break taken.)

1 Q. Mr. Smith, you had said a few minutes
2 ago that you were dumping in a particular
3 location and that you had another location next
4 to it that you knew was next and that was
5 understood to be next if you needed it?

6 A. Yes, sir.

7 Q. Was that closer to the railroad tracks
8 or further from the railroad tracks?

9 A. It would have been closer to the
10 railroad tracks.

11 Q. And I don't think anyone has actually
12 asked you, how far from the railroad tracks were
13 you, do you think? Do you have any estimate of
14 the distance?

15 A. I would say maybe 100 yards.

16 Q. You were closer to the railroad tracks
17 than you were to where Luke Sauer was operating,
18 about the same distance?

19 A. About the same, yes.

20 Q. And you said in your statement that
21 you thought the railroad tracks had been moved

1 when you went out there?

2 A. Yes.

3 Q. Is there something different about
4 these railroad tracks? Can you identify what you
5 thought was different on this drawing? I'm
6 referring to Exhibit 3 which has already been
7 introduced.

8 Q. The railroad tracks moved in this way,
9 in this direction.

10 Q. The railroad tracks were moved south,
11 as you can see that direction is north?

12 A. Yes.

13 Q. Did they build another set of tracks?

14 A. I think so, as best I can remember. I
15 think they added more tracks on and put them on
16 this side of it.

17 Q. All right. So would you have been
18 closer to the tracks that are there now?

19 A. Yes.

20 Q. From that exhibit, can you tell how
21 far east or west you were? We were talking about

1 how close you were to the railroad tracks. That
2 is north on that drawing. Can you tell how far
3 you were to the right or left on that drawing?

4 A. I think I was just about straight in
5 the middle of it.

6 Q. So about in the middle of that
7 sketch?

8 A. Yes.

9 Q. I have a few other kinds of
10 questions. You mentioned that you know Andrew
11 Ragsdale?

12 A. Yes.

13 Q. How long had you known him before you
14 started working at Sauer's? Had he already been
15 around for a while?

16 A. Yes, he had.

17 Q. Can you remember how often you saw him
18 at Sauer's Landfill, or did you see him at
19 Sauer's Landfill?

20 A. Yes, yes. I would see him the average
21 of once a day.

1 Q. You saw him once a day?

2 A. Yes.

3 Q. Do you know what waste he was hauling
4 or what trash he was hauling, where he was coming
5 from?

6 A. It was sort of like household trash.

7 Q. Let me start this as a general
8 question. The drivers were supposed to dump
9 where you told them, near your bulldozers?

10 A. Yes.

11 Q. Would you know if a driver didn't do
12 that? Suppose a driver were in a hurry and just
13 came in and dumped someplace and drove off?

14 A. Well, he was closer to where I was at
15 than he would be to where Sauer's was pushing
16 trash.

17 Q. Suppose he just dumped where there was
18 no bulldozer?

19 A. I never seen that happen.

20 Q. You never saw that happen?

21 A. No.

1 Q. And would he have been in trouble if
2 he had?

3 A. Yes, he would have been.

4 Q. What would you have had to do about
5 it?

6 A. Well, I would have had to told Allie
7 Tyler or somebody higher up than me and tell them
8 that he dumps where I was at if it was a Robb
9 Tyler truck.

10 Q. So that would be disapproved
11 behavior?

12 A. Yes.

13 Q. Do you think Andrew Ragsdale would
14 have done something like that?

15 A. I don't think so.

16 MS. CASANO: I'm sorry, Sam. I missed
17 that last question and answer.

18 (The record was read by the reporter.)

19 Q. Just a few other kinds of questions.
20 You have mentioned a couple of kinds of wastes
21 that were not trash. You mentioned some dust and

1 you mentioned this greasy stuff. Is there any
2 other waste that you recall coming in that was a
3 homogenous industrial kind of material as opposed
4 to trash?

5 A. No.

6 MR. CROWE: Objection, he didn't say
7 the grease came in at Sauer's dump.

8 Q. Two other groups of questions. Have
9 you ever heard of the Allied Baltimore Works?

10 A. No, I haven't.

11 Q. After the Sauer landfill closed and
12 you were working at Norris Farms, did you ever
13 drive by there, either on the expressway or on
14 Kane Street or on Lombard Street?

15 MR. MASUR: By Sauer's dump?

16 Q. Yes, by Sauer's dump?

17 A. No, I didn't.

18 Q. Did you live near there at all?

19 A. No, I lived way out Jarrettsville.

20 MR. CROWE: I think that is all the
21 questions I have.

1 MR. RYAN: Pat?

2 EXAMINATION BY MS. CASANO:

3 Q. I believe you testified while I was
4 out of the room at one point, Mr. Smith, that
5 Parker hauled cinders to the Rosedale Landfill;
6 is that correct?

7 A. Yes.

8 Q. Did you ever see Parker haul cinders
9 to Sauer's Landfill?

10 A. One time.

11 Q. Do you know where the cinders came
12 from?

13 A. From Gas & Electric.

14 Q. Do you know if cinders were something
15 that Parker hauled on a regular basis?

16 A. We used it for to build roads with it
17 across the landfill.

18 Q. When you saw Parker bring cinders to
19 Sauer's Landfill, was it used to build a road at
20 Sauer's Landfill?

21 A. Yes, it was.

1 Q. Did it appear to you that the road
2 that existed at Sauer's Landfill when you started
3 to work there was constructed of cinders?

4 A. Cinders, concrete and bricks.

5 Q. Was it your opinion that the road was
6 constructed of debris that had been dumped there?

7 A. Yes.

8 Q. How often did Parker haul cinders to
9 Rosedale?

10 A. You had to call him up and ask for
11 them.

12 Q. Did he normally take cinders some
13 place other than Rosedale?

14 A. I'm not sure. I thought I heard once
15 that he sold them to block companies to build
16 cinder blocks.

17 MR. BYRD: Can you read that answer
18 back?

19 (The record was read by the reporter.)

20 Q. You testified, Mr. Smith, that the
21 incinerator at Rosedale was not in use from 1964

1 until Rosedale closed. Do you know when the
2 incinerator was in use?

3 A. No, I don't.

4 Q. Do you know what the incinerator was
5 used for when it was in use?

6 A. They used it to burn trash.

7 Q. Do you know what types of trash were
8 burned in it?

9 A. At one time they burned everything
10 that came in there, they burned it.

11 Q. Do you know why they stopped burning
12 trash?

13 A. Only that the incinerator was getting
14 too bad to burn in.

15 Q. When you say getting too bad, do you
16 mean it was emitting too much smoke?

17 A. Well, it was coming apart, about to
18 fall down.

19 Q. In response to questioning by Mr.
20 Bleicher, you talked about building a landfill.
21 Was it your understanding, when you were working

1 at Sauer's Landfill, that filling the trench was
2 part of how Sauer was building his landfill?

3 A. No, not necessarily.

4 Q. Did Sauer ever indicate to you that he
5 wanted to fill that part of the landfill in order
6 to finish it?

7 A. Yes.

8 Q. Did he tell you why he wanted to do
9 that?

10 A. No, he didn't.

11 Q. During the time that you were at
12 Sauer's Landfill, were there any other such
13 trenches at the landfill?

14 A. No.

15 Q. Going back to the cinders for a
16 moment, Mr. Smith, what did the cinders look
17 like?

18 A. It is really hard to describe. They
19 were round clump, cinders like you would get from
20 burning coal. I don't know how else to describe
21 that.

1 Q. Would you say the cinders were not a
2 fine powder?

3 A. No.

4 Q. They did not look like fly ash; is
5 that correct?

6 A. No.

7 Q. Before the Rosedale Landfill was
8 closed permanently, Ms. Kinsey asked you if you
9 knew if the Rosedale Landfill ever was closed at
10 any other time and you indicated that you didn't
11 remember. Did any strikes occur after you began
12 working for Robb Tyler and before the Rosedale
13 Landfill closed?

14 A. Yes.

15 Q. How many strikes were there?

16 A. Just one.

17 Q. Do you remember when that was?

18 A. No, not the year, no.

19 Q. Do you remember approximately how long
20 the strike lasted?

21 A. I think it was about two weeks.

1 Q. Do you recall whether Rosedale was
2 closed during the strike?

3 A. Yes, it would have been closed.

4 Q. Do you recall whether Robb Tyler
5 continued to haul waste from its customers during
6 the strike?

7 A. I really have no way of knowing that.

8 Q. You would have been out on strike?

9 A. Yes, I would have.

10 Q. Would you have walked a picket line?

11 A. Yes, I did.

12 Q. And would that have been at Rosedale?

13 A. Yes.

14 Q. Do you recall seeing any trucks go in
15 or out of the landfill during the strike?

16 A. No.

17 Q. Do you recall whether nonunion
18 personnel employed by Robb Tyler would have
19 picked up waste during that strike?

20 A. I wouldn't know.

21 Q. You indicated a little bit ago, Mr.

1 Smith, that you thought Mike Cefaloni drove a
2 blue Chevrolet truck. And you had earlier stated
3 that Chevrolet Ray drove a blue Chevrolet truck.
4 And so I want to make sure that you haven't
5 confused the two there. Did Mr. Cefaloni and
6 Chevrolet Ray drive the same kind of truck?

7 A. No, Chevrolet Ray's was a dump truck
8 and the other truck might hold six-yard Dumpster
9 bodies on it. And his was a pale blue truck and
10 Chevrolet Ray's was a dark blue truck.

11 Q. From the time that you began working
12 for Tyler until the time that Norris Farm opened,
13 were you aware of any distinction being made
14 between waste and trash that were considered to
15 be hazardous or dangerous, and wastes that were
16 not considered to be hazardous or dangerous?

17 From the time when you began working
18 for Robb Tyler until the time that Norris Farm
19 opened, did Tyler operate an incinerator
20 anywhere?

21 A. Not as I know of.

1 Q. I'm going to direct your attention to
2 page 34 to 36 of Exhibit 2, Mr. Smith.

3 Beginning with line 13 on page 34 and
4 reading through line 15 on page 36 of the, if you
5 would review that, please.

6 A. (Perusing.)

7 Q. Does that excerpt from the transcript,
8 Mr. Smith, refresh your recollection that
9 throughout the time, from 1964 at least until
10 Norris Farm opened, Tyler's drivers would dump at
11 Sauer's Landfill and Sauer's drivers would dump
12 at Tyler's landfill?

13 A. I don't remember the trucks dumping
14 when Rosedale Landfill was open at Tyler's
15 landfill or Sauer's Landfill.

16 Q. Would you agree that your recollection
17 or your memory back in May of this year with
18 respect to this point is more likely to be
19 accurate than your memory today?

20 MR. RYAN: Pat, I just want to say for
21 the record he did state earlier that Boswell, he

1 believes, did haul occasionally to Sauer's dump.
2 So you, to refresh his recollection, I believe
3 that was his testimony earlier.

4 Q. This, to me, is just a little bit
5 broader than just Boswell dumping and Sauer's
6 dump, and that is what I'm trying to get at.

7 MR. RYAN: So the question is was your
8 memory better in May than it is now?

9 A. I don't think so.

10 Q. Do you have any reason to believe that
11 Robb Tyler drivers other than Boswell did not use
12 Sauer's Landfill before Rosedale closed?

13 MR. RYAN: Did you understand that
14 question?

15 A. No, I don't have no reason to believe
16 that they didn't.

17 Q. Okay, that is fine.

18 Turning your attention to page 114 of
19 Exhibit 2, actually, I'm sorry. Let me direct
20 your attention to page 49 of Exhibit 2 first,
21 beginning with line 3 and reading down through

1 line 19. Actually, if you would read through
2 page 51, line 4. So that would be from page 49,
3 line 3 to page 51, line 44.

4 A. (Perusing.)

5 Q. Do you recall going to the site with
6 Ms. Walsh in 1987?

7 A. No.

8 Q. Do you remember why your son drove
9 into Picorp?

10 A. So I could show Gwen Walsh where I
11 dumped Robb Tyler trucks there.

12 Q. Did someone tell your son where to
13 park? Did someone tell your son to go into
14 Picorp?

15 A. I believe, I don't know if it was me
16 or Gwen Walsh that told him to drive in there.

17 Q. When you went to the site with Ms.
18 Walsh, did you just walk around the Picorp
19 property?

20 A. Yes.

21 Q. Did you walk over by the Patterson

1 High School building at all?

2 A. No.

3 Q. Are you familiar with the baseball
4 diamonds that are over by Patterson High School?

5 A. Yes.

6 Q. Did you walk around by the baseball
7 diamonds at all?

8 A. No.

9 Q. Are you familiar with the tennis
10 courts that are by Patterson High School?

11 A. I don't recall seeing any tennis
12 courts there.

13 Q. Are you familiar with where Roadway
14 Express is located near Sauer's Landfill or near
15 the property that used to be Sauer's Landfill?

16 A. No.

17 Q. Did you cross Lombard Street from the
18 Picorp property when you were at the site with
19 Ms. Walsh?

20 A. No. We drove down Lombard Street,
21 wouldn't that have been, and then into Picorp.

1 Q. Okay. When you went to the site with
2 Ms. Walsh in 1987, do you recall seeing a fence
3 around part of what used to be Sauer's Landfill?

4 A. I don't remember.

5 Q. Do you recall seeing any signs with
6 the words "Environmental Protection Agency" on
7 them?

8 A. No, I didn't.

9 Q. Do you recall seeing a trailer that
10 said Environmental Protection Agency on it?

11 A. No.

12 Q. Directing your attention to page 114,
13 Mr. Smith, beginning with line 4, and this is a
14 relatively long excerpt. If you would read over
15 to page 120, through page 120.

16 A. (Perusing.)

17 Q. Is there anything about your testimony
18 that appears on pages 114 through 121 of
19 Exhibit 2 that you recall any differently today?

20 A. No.

21 Q. So is it correct to say then that your

1 testimony about where the trench was located is
2 based upon your visit to the site with Ms. Walsh,
3 and that when you went to the site, you were
4 relying mostly upon the Patterson High School
5 building and the railroad tracks as points of
6 reference; is that correct?

7 A. Yes.

8 Q. And you testified today that even the
9 railroad tracks had been moved from the time you
10 worked at Sauer's Landfill; is that correct?

11 A. Yes.

12 Q. So that the only landmark, if you
13 will, in the area of Sauer's Landfill that
14 remains unchanged from the time when you worked
15 at Sauer's Landfill is the Patterson High School
16 building?

17 A. Yes.

18 MS. CASANO: I have nothing further.

19 MR. MASUR: Bear with me. I have two
20 questions.

21 EXAMINATION BY MR. MASUR:

1 Q. Mr. Bleicher has asked me to ask you
2 whether bulldozer operators were paid more than
3 truck drivers. He's trying to decide which
4 second career to follow.

5 A. No. The truck drivers at the time
6 were making more than I was.

7 Q. Do you recall there were ballfields
8 immediately behind Patterson High School going
9 toward the dump; do you recall that?

10 A. Yes.

11 Q. Do you recall whether there was a
12 fence between the ballfields and the dump?

13 A. To the best of my knowledge, I don't
14 think there were.

15 Q. There were trees up there; is that
16 correct, between Patterson High School and the
17 dump?

18 A. No.

19 Q. You don't recall any trees between
20 there?

21 A. No.

1 Q. Running along Kane Street, do you
2 recall there also being ball diamonds running
3 along Kane Street?

4 A. Yes.

5 Q. Do you recall whether there was a
6 fence between those ball diamonds and the dump?

7 A. No, I don't.

8 Q. You don't recall?

9 A. No.

10 MR. MASUR: I have nothing further.

11 MR. RYAN: Anybody else?

12 EXAMINATION BY MR. LAND:

13 Q. Mr. Smith, you testified earlier today
14 that you remembered seeing Chevrolet Ray just
15 about every day at Rosedale?

16 A. Yes.

17 Q. And then you recall seeing him at
18 Sauer's dump?

19 A. Yes.

20 Q. Did you also remember seeing him at
21 Norris Farms once Norris Farms opened?

1 A. Yes, I do.

2 Q. How often would you see Chevrolet Ray
3 at Norris Farms?

4 A. Most every day. Once in a while it
5 would be twice a day.

6 Q. And did you see him beginning right
7 after you moved from Sauer's dump to Norris
8 Farms?

9 A. Yes.

10 Q. Who decided, after Rosedale closed,
11 that waste that had previously been taken to
12 Rosedale were going to be taken to Sauer's dump?

13 A. I guess Robb Tyler.

14 Q. Did the customers of Robb Tyler whose
15 wastes had been going to you Rosedale know that
16 their wastes had been taken to Sauer's dump?

17 A. I don't know.

18 Q. Did anyone ask the customers of Robb
19 Tyler?

20 A. I have no way of knowing that.

21 Q. Do you recall any discussions between

1 Robb Tyler and Fred Sauer about taking waste to
2 Fred Sauer's dump?

3 A. No.

4 Q. Why do you think it is that Robb Tyler
5 decided that wastes were going to be taken to
6 Sauer's dump once Rosedale closed?

7 MR. RYAN: Object. It calls for
8 speculation, but if you know.

9 A. The only thing I know is he didn't
10 have no place else to dump at the time on this
11 side of town.

12 Q. Based on your experience, would a
13 decision of that importance have to be made by
14 Robb Tyler?

15 A. Yes, it would.

16 Q. And did Fred Sauer agree to accept
17 waste that had previously been going to
18 Rosedale?

19 MR. RYAN: If you know what Fred and
20 Rob talked about?

21 A. I presume he did.

1 Q. When you were working at Sauer's,
2 there was nothing that Fred Sauer's said or did
3 that would make you believe that he didn't want
4 the waste coming into Sauer's dump?

5 A. No.

6 Q. I think that is all that I have.
7 Thank you.

8 EXAMINATION BY MR. BYRD:

9 Q. You told Ms. Casano a little while ago
10 that you remember a load of cinders coming into
11 Sauer's dump, one load. Did you, on that
12 occasion, speak to the driver of the truck that
13 brought those cinders in?

14 A. No.

15 Q. So then you don't know, as a matter of
16 fact, exactly where the cinders came from that
17 day?

18 A. No.

19 Q. You indicated this morning, when asked
20 where the fly ash came from, who indicated first
21 that it was Western Electric. Then you said

1 Baltimore Gas & Electric. Did you say that
2 because you were confused as to where the fly ash
3 came from?

4 A. Yes, because I know it came from the
5 electric company.

6 Q. But you are not sure exactly what
7 electric company?

8 A. No.

9 Q. So it came from a company that had the
10 word electric in it, is that what you are
11 saying?

12 A. Yes.

13 Q. Is that the best of your recollection
14 today?

15 A. Yes.

16 MR. BYRD: I don't have any further
17 questions.

18 MR. GILLAN: I'd like to ask just a
19 couple.

20 EXAMINATION BY MR. GILLAN:

21 Q. Mr. Smith, are you aware of any time

1 after you left Sauer's dump that Sauer's dump
2 closed?

3 A. You mean when it closed?

4 Q. Yes.

5 A. No, I don't.

6 Q. When you left the dump, at the time
7 that you left, can you describe the general
8 condition of the dump? How did it look if you
9 looked out over the dump from the seat of your
10 equipment? Was it open land?

11 A. Yes, it was open land all over.

12 Q. Were there piles of anything that
13 hadn't been flattened out?

14 A. No.

15 Q. This was all at Sauer's dump then?

16 A. Yes.

17 Q. You said earlier today you discussed
18 Sam Grant dealing with drums at the Rosedale
19 Landfill, some salvage, and in that salvage were
20 drums. Were drums often in loads of trash
21 brought into Sauer's dump or Rosedale, Rosedale

1 first?

2 A. Yes. They were sometimes in Rosedale
3 trash.

4 Q. Sometimes, is that frequently or
5 infrequently?

6 A. I don't know. I guess it would depend
7 on where the load of trash came from, I guess.

8 Q. At Sauer's dump, did you often see
9 drums at Sauer's dump as well? By drums, I mean
10 50-gallon drums?

11 A. Yes, but not in the trash.

12 Q. Not in the trash. Were the drums that
13 you saw, you saw drums at Sauer's dump?

14 A. Yes.

15 Q. Where, on the dump, did you see them?
16 Is there a particular location or were they
17 spread out?

18 A. They were dumped where Luke Sauer's
19 was pushing trash at.

20 Q. Were those empty drums or were they
21 full drums?

1 A. Yes, they were empty.

2 Q. Do you know did they come in empty?

3 A. Yes.

4 MR. GILLAN: I have no further
5 questions.

6 MS. CASANO: Anyone else. We are
7 concluded. Mr. Smith, thank you very much.

8 (Discussion off the record.)

9 MS. CASANO: The parties have agreed
10 to the stipulation that the room in which the
11 deposition was taken was approximately 21 feet
12 wide by 31 feet long by nine feet high. Thank
13 you. This is the conference room at Piper &
14 Marbury, 11th floor large conference room.

15 (Examination concluded at 4:45)

16 -----

17

18

19

20

21

1 STATE OF MARYLAND SS:

2 I, Brenda R. Pearson, a Notary Public
3 of the State of Maryland, do hereby certify that
4 the within named, EDGAR S. SMITH, personally
5 appeared before me at the time and place herein
6 set out, and after having been duly sworn by me,
7 was interrogated by counsel.

8 I further certify that the examination
9 was recorded stenographically by me and this
10 transcript is a true record of the proceedings.

11 I further certify that the
12 stipulations contained herein were entered into
13 by counsel in my presence.

14 I further certify that I am not of
15 counsel to any of the parties, nor an employee of
16 counsel, nor related to any of the parties, nor in
17 any way interested in the outcome of this action.

18 As witness my hand and notarial seal
19 this 15th day of November, 1991.

20 My commission expires

21 July 1, 1992

Notary Public



SALOMON REPORTING SERVICE, INC.
Baltimore, Maryland (410) 539-6760

1 I N D E X O F W I T N E S S E S

2	<u>Witness</u>	<u>Page</u>
3	Edgar S. Smith	
4	BY MS. CASANO	6
5	BY MR. BRAGER	114
6	BY MR. SCHALLER	118
7	BY MR. JOSEPH	164
8	BY MR. CROWE	168
9	BY MS. CASANO	192

10

11

12 I N D E X O F E X H I B I T S

13 Smith

14	<u>Exhibits</u>	<u>Page</u>
15	No. 1 Affidavit	9
16	No. 2 Transcript	10
17	No. 3 Sketch	79

18

19

20

21

ORIGINAL
(Rec)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA and STATE OF MARYLAND,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 89-2898
)	
EDWARD AZRAEL. <u>et al.</u> ,)	
)	
Defendants.)	

AFFIDAVIT OF EDGAR SMITH

STATE OF MARYLAND)
COUNTY OF Harford) ss.

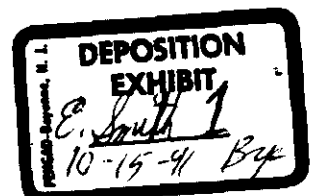
I, EDGAR SMITH, being first duly sworn, state upon my oath:

1. My name is Edgar Smith and my nickname is "Smitty".

I reside at 2072 Nelson Mill Road, Jarrettsville, Maryland 21084.

2. I worked for Robb Tyler, Inc. beginning in 1964 and continuing until they were bought out by Browning-Ferris, Inc. I continued to work for Browning-Ferris, Inc. until I retired in 1987.

3. I ran a bulldozer for Robb Tyler, Inc. at its Rosedale Landfill located near 68th & Pulaski until that landfill closed in the spring of 1969.



ESS
ES

GM 000739

ORIGINAL
(100)

4. I ran a bulldozer for Robb Tyler, Inc. at its Norris Farm Landfill from the time it opened in the summer or early fall of 1969 and worked on site preparation at the Norris Farm Landfill before it opened.

5. During the few months after the Rosedale Landfill closed and before the Norris Farm Landfill opened, Robb Tyler, Inc. needed a place to dispose of waste from some of its customers on the East side of Baltimore.

6. Fred Sauer, whose nickname was "Fritz", had a dump near the intersection of Kane Street and North Point Road. Sauer's Dump included property on both the North and the South sides of what later became Bayview Avenue.

7. During the few months after the Rosedale Landfill closed and before the Norris Farm Landfill opened, Fritz Sauer permitted Robb Tyler, Inc. drivers to dispose of waste on a specific portion of Sauer's Dump, located North of what later became Bayview Avenue. The area Sauer assigned to Robb Tyler, Inc. to dump on was on property now owned by a company called PICORP, about 50 yards from the current PICORP office and West of the old railroad depot. The railroad depot was in the same place in 1969 as it now stands. The area used for waste from Robb Tyler, Inc. customers is entirely to the North of what was later called Bayview Avenue.

8. I was assigned to operate a bulldozer on the portion of the Sauer Dump on which Robb Tyler, Inc. was permitted to dispose of waste after the Rosedale Landfill closed and before

GM 000740

ESS.
ES

the Norris Farm Landfill opened. I ran a rubber-tired 280 Michigan bulldozer from Clark Equipment, and my job was to push and cover the waste brought to Sauer's dump by Robb Tyler, Inc. drivers and subcontractors.

9. I personally saw where the Robb Tyler, Inc. drivers and subcontractors unloaded the waste they were hauling to Sauer's Dump. All of the waste brought to Sauer's Dump by Robb Tyler, Inc. drivers and subcontractors while I was present to run the bulldozer was dumped in the area I was allowed to work in, which was entirely to the North of what later became Bayview Avenue.

10. My work hours during the months I was assigned to work at Sauer's Dump were about 7:30 a.m. to 8:00 p.m. I worked six days per week.

11. I worked in the same area during the entire time I worked at Sauer's Dump. The dumping by Robb Tyler, Inc. drivers and subcontractors did not go as far South as what later became Bayview Avenue.

12. While I was running a bulldozer on the North part of Sauer's dump, Fritz Sauer's trash company was running its own dumping operation on the South part of Sauer's dump, South of what later became Bayview Avenue. This area is closer to Patterson High School. This area was a few hundred feet South of where I was working, within shouting distance. While I was working on the North part of Sauer's dump, I could see what was being dumped on the South part of Sauer's dump, which Sauer's people were operating.

13. Sauer had a driver who was called "the Guinea". Either Luke Sauer or Fritz Sauer's son, whose name I believe was Edwin, ran heavy equipment for Sauer's operation. Neither I nor anyone else from Robb Tyler, Inc. had anything to do with Sauer's operation.

14. While I was working on the North part of Sauer's Dump, all of the waste from Sauer's customers and from haulers other than Robb Tyler, Inc. was dumped in Sauer's dumping area South of what became Bayview Avenue. Bohager took trash there while I was working.

15. I personally saw a General Motors employee people called "Chevrolet Ray" haul drums to Sauer's dumping area South of what later became Bayview Avenue, open the drums, and pour the contents on the surface of the ground, then take back the drums. The liquid in the drums I saw included paint thinner. I remember the solvent smell. There were barrels of cleaning fluids, sludge and oily rags. Chevrolet Ray always dumped in the same area while I was at Sauer's Dump.

16. I personally saw Sauer's drivers bring Western Electric copper insulated steel wire and dump it on the ground in Sauer's dumping area South of what later became Bayview Avenue. The copper insulated steel wire was always dumped in the same area while I was at Sauer's Dump.

17. A few months ago, I went to the property on which Sauer's Dump used to be located. I confirmed the location where waste from Robb Tyler, Inc. customers was dumped. I have also looked at aerial photographs of the Sauer Dump and confirmed the

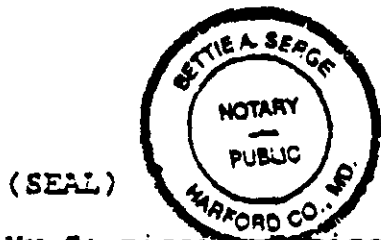
GM 000742

ESS
ES

location where waste from Robb Tyler, Inc. customers was dumped and the location where the General Motors and Western Electric wastes were dumped. There is no doubt in my mind, all of the waste from Robb Tyler, Inc. customers dumped while I was present was dumped in the area I was allowed to work in, which was entirely North of what became Bayview Avenue.

Edgar S. Smith
Edgar Smith

Subscribed and sworn to before me, a notary public,
this 24 day of September, 1990.



My Commission Expires:

11-1-94

Bettie A. Serge
Notary Public

37152